

No. 10727

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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JOHN R. HALEY, as Administrator of the Estate  
of George Salter, deceased,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the District of Montana

FILED

MAY 25 1944

PAUL P. O'BRIEN,  
CLERK



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Upon Appeal from the District Court of the United States  
for the District of Montana



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
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\*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States, in and  
for the District of Montana, Helena, Division

JOHN R. HALEY, as Administrator of the Estate  
of George Salter, Deceased; JOHN SALTER  
and PETER SALTER,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

### COMPLAINT-AT-LAW

Come now the plaintiffs above named and for  
cause of action against the defendant complain and  
allege:

#### I.

That Ella May Stanton Wood was duly and regularly appointed as administratrix of the estate of George Salter, deceased, by order of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, regularly made and entered therein in the matter of the estate of George Salter, deceased, on the 11th day of August, 1930, and served as said administratrix of said estate from the 11th day of August, 1930 to June 2nd, 1934; that the plaintiff, John R. Haley, is now the duly and regularly appointed, qualified and acting administrator of the estate of George Salter, deceased, appointed by order of the District Court of the Second Judicial District of the State of Montana, in and for the County of

Silver Bow, in the matter of the estate of George Salter, deceased, regularly made and entered therein on the 2nd day of June, 1934; that Letters of Administration were duly and regularly issued to the plaintiff, John R. Haley, by said Court on the 2nd day of June, 1934, and the same have never been [3] revoked and are now in full force and effect, and as such administrator he succeeded Ella May Stanton Wood, who resigned.

## II.

That George Salter, deceased, died intestate, a resident of Silver Bow County, Montana, on the 4th day of October, 1918, and his estate is entitled to be distributed under the intestate laws of the State of Montana; that a proceeding was had in the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, in the matter of the estate of George Salter, deceased, probate file No. 9105, to determine heirship in said estate under the provisions of the laws of the State of Montana in such cases made and provided; that said Court at said time and place had jurisdiction to make such determination and that in a proceeding duly and regularly filed in said probate Court, which complied with all of the provisions of the laws of the State of Montana in all respects under said laws in said State, and that said Court at said time and place assumed and took jurisdiction to determine the legal heirs of George Salter, deceased, and that on or about the 3rd day of October, 1932, said Court by order

and by decree duly and regularly entered and filed in said Court on said day, the Court having jurisdiction to make such decree, determined and decreed the said John Salter and the said Peter Salter to be brothers of George Salter, deceased, and to be the only heirs at law of said deceased, and as such entitled to inherit the whole of said estate of said George Salter, deceased, under the intestate laws of the State of Montana; that in said proceeding said Court had jurisdiction of the subject matter and of the parties; that attached hereto and by this reference made a part hereof, is plaintiffs' "Exhibit A", which is a certified copy of said proceedings had in said Court, and which includes said decree of said Court determining heirship, as aforesaid; that the said decree of the District Court of the Second Judicial District of the [4] State of Montana, in and for the County of Silver Bow, a certified copy of which is attached hereto and by this reference made a part hereof, as aforesaid, adjudicates and determines the matter of heirship in the estate of George Salter, deceased, and is binding as a matter of law upon the above entitled Court and cannot be collaterally attacked.

### III.

That during the process of the administration of the estate of George Salter, deceased, in the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, probate file No. 9105, the administratrix of said estate duly and regularly published

notice to creditors; that within the time permitted in said notice and within the time allowed by law, Helma Nicholson, as administratrix of the estate of Mary Johnson, deceased, filed with the administratrix of the estate of George Salter, deceased, her claim, verified by affidavit, claiming said estate of George Salter, deceased, to be indebted to her in the sum of One Thousand Four Hundred Ninety-five and 83/100 Dollars (\$1,495.83); that said Ella May Stanton Wood, administratrix, allowed said claim on the 23rd day of February, 1932, and the Judge of the District Court having jurisdiction of said probate matter allowed said claim in the sum of Seven Hundred Forty-eight and no/100 Dollars (\$748.00) on the 4th day of June, 1932; that within the time permitted in said notice and within the time allowed by law, Mrs. Ella May Stanton Wood filed her claim, verified by affidavit, in said probate matter and said claim was on the 4th day of June, 1932 allowed by the Judge of said probate Court having jurisdiction in said matter in the sum of One Thousand and no/100 Dollars (\$1,000.00); that attached hereto marked "Exhibit B" and "Exhibit C", and by this reference made a part hereof, are certified copies of said claims so allowed, as aforesaid, and that no part of said claims has been paid, and that no part of the costs of administration has [5] been paid, and said estate has no property or money to pay either said claims or the costs of administration.

## IV.

That on or about the 27th day of April, 1918, at the City of Butte, County of Silver Bow, State of Montana, George Salter, now deceased, enlisted and was inducted into the armed forces of the defendant, the United States of America, with the grade of private and served under the War Department in the army of the United States in the Infantry Division from said 27th day of April, 1918, until the 4th day of October, 1918, and was, during all of said time, employed in the active military service of the United States, under the direct supervision of its War Department in the war with Germany and her allies; that at the time of his enlistment, April 27th, 1918, the said George Salter, now deceased, was a legal resident of Silver Bow County, Montana.

## V.

That on or about May, 1918, the said George Salter, now deceased, made application to the proper officials of the United States for insurance under the provisions of Article IV. of the War Risk Insurance Act of Congress and the regulations of the War Risk Insurance Bureau of the defendant, established by said Act, in the sum of Ten Thousand Dollars (\$10,000.00), but that said George Salter, deceased, never received a certificate of his compliance with the War Risk Insurance Act, but that after making said application for insurance, and during the entire term of George Salter's service under the War Department, as aforesaid, there was deducted from his monthly pay for such



service for the defendant, United States of America, through its proper officials, the monthly premiums upon said War Risk Insurance provided for by said Act and the rules and regulations promulgated thereunder by the War Risk Insurance Bureau and the Director thereof. [6]

## VI.

That the said George Salter, deceased, died on the 4th day of October, 1918, while said insurance was in full force and effect, and was killed in action while fighting with the armed forces of the defendant in the American Expeditionary Forces in France; that in his application for insurance, said George Salter, now deceased, named his estate as beneficiary and that said insurance matured after the death of George Salter, deceased, on the 4th day of October, 1918, and on said day became payable to the estate of said George Salter, deceased.

## VII.

That by written communication dated March 5th, 1930 Ella May Stanton Wood, claimant in said estate and who was later made administratrix of said estate, as hereinbefore alleged, through her attorney made claim for the benefits of said insurance and which said written communication to Frank T. Hines, Administrator of Veterans' Affairs of the United States, which was received by said Administrator on or about March 9th, 1930, said in part as follows:

“\* \* \* I desire, \* \* \*, to know \* \* \*, if the Bureau would voluntarily pay it (insurance) to

his (George Salter's) administrator. The above information will be greatly appreciated. \* \* \*'

That the Veterans' Administration replied to said written communication in writing without stating whether the insurance would be voluntarily paid to the estate and that again on April 26th, 1930 Ella May Stanton Wood, through her attorney, served another written communication on the Administrator of the Veterans' Administration, which was received by said Administrator on or about April 30th, 1930, and in that communication said attorney used the following language:

“\* \* \* Will the bureau pay the amount due the estate on the insurance policy to the administrator of said deceased's estate, [7]

That said Administrator and said Veterans' Administration replied to said second written communication without stating whether or not said insurance would be paid to said estate, and that not knowing exactly what it took to constitute a denial under the terms of the War Risk Insurance Act, Ella May Stanton, who was later Ella May Stanton Wood by marriage, filed suit in the District Court of the United States, in and for the District of Montana, Helena Division, on or about the 10th day of October, 1930, and in which said administratrix, as plaintiff, alleged that said Administrator had refused to pay said insurance benefits; that said Complaint in said action was amended by plaintiff, and Ella May Stanton Wood resigned as administratrix and John R. Haley was appointed in her stead and that finally



the Judge of the District Court of the United States in said case finally sustained a demurrer to the Fourth Amended Complaint, and judgment in said action was duly and regularly entered dismissing the same on the 4th day of February, 1936; that said action was determined and said judgment entered because of the order of said Court sustaining said demurrer and plaintiffs did not file another amended complaint and that said judgment was not on the merits in said case and was entered in said case for the reason of the indefiniteness of the allegations in said Fourth amended Complaint in alleging a disagreement and that said action failed for reasons other than on its merits; that the first communication received by either of the above entitled plaintiffs, by Ella May Stanton, Ella May Stanton Wood, or John R. Haley, which informed either that the Veterans' Administration of the United States and of the defendant herein, would not pay the benefits of said insurance was in a written communication dated at Washington, D. C. January 19th, 1937, and which communication in an attempt to make legal conclusions and to color the record pretended to quote from all of the correspondence in the file of said case, and finally in the last paragraph of said letter, Frank T. Hines, the Administrator of Vet- [8] erans' Affairs of the United States, wrote to plaintiff, John R. Haley, as administrator of the estate of George Salter, deceased, as follows:

“You are \* \* \* advised, upon the evidence of record in the Veterans' Administration, I am of

the opinion the insurance claimed by said veteran is not payable under the law, and for such reason the claim \* \* \* is denied."

That said letter was received by plaintiff, John R. Haley, through one of his attorney, Warren E. Miller of Washington, D. C., on or about January 20th, 1937, and that the same was furnished to plaintiff, John R. Haley, after he had petitioned the Supreme Court of the District of Columbia for a Writ of Mandamus directed to Frank T. Hines, and upon which petition Frank T. Hines was ordered to appear and show cause why he should not either pay or refuse to pay said insurance; that as heretofore stated, plaintiff, John R. Haley, and his predecessor, Ella May Stanton Wood, represent said estate and the creditors of said estate and through their respective attorneys demanded in writing of Frank T. Hines, Administrator of Veterans' Affairs, beginning with March 9th, 1930 the benefits of said insurance of George Salter, deceased, for his estate; that said claim was denied by Frank T. Hines, Administrator, in writing, in a communication dated January 19th, 1937 and received by plaintiffs' attorneys about January 20th, 1937, and that said demand in writing and denial in writing constitute a disagreement between the plaintiffs, the estate of George Salter, deceased, and the United States of America, and the United States Veterans' Administration, successor to the United States Veterans' Bureau and the Administrator thereof, within the meaning of the War

Risk Insurance Act of Congress and the amendments thereto.

### VIII.

That under the provisions of the War Risk Insurance Act and the amendments thereto, the estate of George Salter, de- [9] ceased, is entitled to the payment of the entire benefits of said War Risk Insurance policy because of the death of said insured, such benefits amounting in all to the face value of said policy of Ten Thousand Dollars (\$10,000.00), and there is now due the estate of George Salter, deceased, from the defendant on said insurance, the sum of Ten Thousand Dollars (\$10,000.00).

Wherefore, plaintiffs pray judgment against the defendant for the sum of Ten Thousand Dollars (\$10,000.00) in favor of the estate of George Salter, deceased, to be paid to John R. Haley, as administrator thereof, and that the judgment herein provide for the payment to plaintiffs' attorneys a fee of Ten per cent (10%) of such judgment, and that plaintiffs be awarded such other and further relief as to this Honorable Court seems meet and proper in the premises.

JOHN W. MAHAN,

Attorney for Plaintiffs, Helena, Montana.

[Endorsed]: Filed Feb. 3. 1937. [10]

[Title of District Court and Cause.]

## AMENDED COMPLAINT AT LAW

Leave of Court first being had comes now the plaintiff above named and for cause of action against the defendant, complains and alleges:

### I.

That Ella May Stanton Wood was duly and regularly appointed as administratrix of the estate of George Salter, deceased, by order of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, regularly made and entered therein in the matter of the estate of George Salter, deceased, on the 11th day of August, 1930, and served as said administratrix of said estate from the 11th day of August, 1930, to June 2nd, 1934; that plaintiff, John R. Haley, is now the duly and regularly appointed, qualified and acting administrator d.b.n. of the estate of George Salter, deceased, appointed by order of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, in the matter of the estate of George Salter, deceased, regularly made and entered therein on the 2nd day of June, 1934; that Letters of Administration were duly and regularly issued to plaintiff, John R. Haley, by said Court on the 2nd day of June, 1934, and the same have never been revoked and are now in full force and effect, and as such administrator he succeeded Ella May Stanton Wood, who resigned. [39]

## II.

That George Salter, deceased, died intestate, a resident of Silver Bow County, Montana, on the 4th day of October, 1918, and his estate was and is entitled to be probated under the intestate laws of the State of Montana, and that plaintiff, as before alleged, is the duly and regularly appointed, qualified and acting administrator of said estate.

## III.

That during the process of the administration of the estate of George Salter, deceased, in the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, probate file No. 9105, the administratrix of said estate duly and regularly published notice to creditors; that within the time permitted in said notice and within the time allowed by law, Hilma Nicholson, as administratrix of the estate of Mary Johnson, deceased, filed with the administratrix of the estate of George Salter, deceased, her claim, verified by affidavit, claiming said estate of George Salter, deceased, to be indebted to her in the sum of One Thousand Four Hundred Ninety-five and 83/100 Dollars (\$1,495.83); that said Ella May Stanton Wood, administratrix, allowed said claim on the 23rd day of February, 1932, and the Judge of the District Court having jurisdiction of said probate matter allowed said claim in the sum of Seven Hundred Forty-eight and no/100 Dollars (\$748.00) on the 4th day of June, 1932; that within the time permitted in said notice and within the time al-



lowed by law, Mrs. Ella May Stanton Wood filed her claim, verified by affidavit, in said probate matter, and said claim was on the 4th day of June, 1932, allowed by the Judge of said probate Court having jurisdiction in said matter, in the sum of One Thousand and no/100 Dollars (\$1,000.00); that attached hereto, marked "Exhibit A." and "Exhibit B". and by this reference made a part hereof are correct copies of said claims so allowed, as aforesaid, and that no part of said claims has been paid, and that no part of the costs of [40] administration has been paid, and said estate has no property or money to pay either said claims or the costs of administration; that on the 17th day of February, 1940, plaintiff, as administrator d.b.n. of said estate, filed an account, report and petition in which said administrator reported the process of the administration of said estate, the money expended therefor, and that there was no money or other assets in said estate to pay the costs of administration or the claims heretofore alleged, and petitioned the Court to fix the fee of the administrator and of the administrator's attorney; that said probate Court on the same date made its order in said estate fixing the time and place for hearing said account, report and petition, and directed that notice thereof be given and at the time and place of said hearing said probate Court, after hearing the testimony of witnesses, made its order allowing the report, settling the account and allowing administrator's and attorney's fees; that marked "Exhibit C.", attached hereto and by this refer-

ence made a part thereof, is a copy of said order; that it will be noted from said order, "Exhibit C.", that the Court allowed expenditures made by said administrator in the administration of said estate in the sum of One Thousand Four Hundred Eight and 81/100 Dollars (\$1,408.81); that the claims in the amount of One Thousand Seven Hundred Forty-eight and no/100 Dollars (\$1,748.00), previously allowed were again approved and in said order said Court found that the same should bear interest at the rate of 6% per annum dating from June 4th, 1932; that the administrator's fee was fixed at \$500.00 and that of his attorney at \$750.00; that the interest on said claims, the principals of which total \$1,748.00, at the rate of 6% per annum, is Eight Hundred Forty-seven and 78/100 Dollars (\$847.78); that the total of the costs of administration, claims and interest and amount now due and owing by said estate to all persons is Four Thousand four and 59/100 Dollars (\$4,004.59), and that there are no assets or other property in said estate to pay any part or the whole thereof. [41]

#### IV.

That on or about the 27th day of April, 1918, at the City of Butte, County of Silver Bow, State of Montana, George Salter, now deceased, enlisted and was inducted into the armed forces of the defendant, the United States of America, with the grade of private and served under the War Department in the army of the United States in the Infantry Division from said 27th day of April,

1918, until the 4th day of October, 1918, and was, during all of said time, employed in the active military service of the United States, under the direct supervision of its War Department in the war with Germany and her allies; that at the time of his enlistment, April 27th, 1918, the said George Salter, now deceased, was a legal resident of Silver Bow County, Montana.

V.

That on or about May, 1918, the said George Salter, now deceased, made application to the proper officials of the United States for insurance under the provisions of Article IV. of the War Risk Insurance Act of Congress and the regulations of the War Risk Insurance Bureau of the defendant, established by said Act, in the sum of Ten Thousand Dollars (\$10,000.00), but that said George Salter, now deceased, never received a certificate of his compliance with the War Risk Insurance Act, but that after making said application for insurance, and during the entire term of George Salter's service under the War Department, as aforesaid, there was deducted from his monthly pay for such service for the defendant, United States of America, through its proper officials, the monthly premiums upon said War Risk Insurance provided for by said Act and the rules and regulations promulgated thereunder by the War Risk Insurance Bureau and the Director thereof.



## VI.

That said George Salter, died on the 4th day of October, 1918, while said insurance was in full force and effect, and [42] was killed in action while fighting with the armed forces of the defendant in the American Expeditionary Forces in France; that in his application for insurance, said George Salter, now deceased, named his estate as beneficiary and that said insurance matured after the death of George Salter, deceased, on the 4th day of October, 1918, and on said day became payable to the estate of George Salter, deceased.

## VII.

That by written communication dated March 5th, 1930, Ella May Stanton Wood, claimant in said estate and who was later made administratrix of said estate, as hereinbefore alleged, through her attorney made claim for the benefits of said insurance and which said written communication to Frank T. Hines, Administrator of Veterans' Affairs of the United States, which was received by said Administrator on or about March 9th, 1930, said in part as follows:

“\* \* \* I desire, \* \* \* to know \* \* \* if the Bureau would voluntarily pay it (insurance) to his (George Salter's) administrator. The above information will be greatly appreciated.\* \* \*”.

That the Veterans' Administration replied to said written communication in writing without stating whether the insurance would be voluntarily paid to the estate and that again on April 26th, 1930

Ella May Stanton Wood, through her attorney, served another written communication on the Administrator of the Veterans' Administration, which was received by said Administrator on or about April 30th, 1930, and in that communication said attorney used the following language:

“\* \* \* Will the Bureau pay the amount due the estate on the insurance policy to the administrator of said deceased's estate, \* \* \*”.

That said administrator and said Veterans' Administration replied to said second written communication without stating whether or not said insurance would be paid to said estate, and that not knowing exactly what it took to constitute a denial under the terms of the War Risk Insurance Act, Ella May Stanton, who was later Ella May Stanton Wood [43] by marriage, filed suit in the District Court of the United States, in and for the District of Montana, Helena Division, on or about the 10th day of October, 1930, and in which said administratrix, as plaintiff, alleged that said Administrator had refused to pay said insurance benefits; that said complaint in said action was amended by plaintiff, and Ella May Stanton Wood resigned as Administratrix and John R. Haley was appointed in her stead and that finally the Judge of the District Court of the United States in said case sustained a demurrer to the Fourth Amended Complaint, and judgment in said action was duly and regularly entered dismissing the same on the 4th day of February, 1936; that said action was dismissed and

said judgment entered because of the order of said Court sustaining said demurrer and plaintiffs did not file another amended complaint, and that said judgment was not on the merits in said case and was entered in said case for the reason of the indefiniteness of the allegations in said Fourth Amended Complaint in alleging a disagreement and that said action failed for reasons other than on its merits; that the first communication received by either of the above entitled plaintiffs, Ella May Stanton, Ella May Stanton Wood, or John R. Haley, which informed either that the Veterans' Administration of the United States and of the defendant herein, would not pay the benefits of said insurance was in a written communication dated at Washington, D. C. January 19th, 1937, and which communication, in an attempt to make legal conclusions and to color the record, pretended to quote from all the correspondence in the file of said case, and finally in the last paragraph of said letter, Frank T. Hines, the Administrator of Veterans' Affairs of the United States, wrote to plaintiff, John R. Haley, as administrator of the estate of George Salter, deceased, as follows:

“You are \* \* \* advised, upon the evidence of record in the Veterans' Administration, I am of the opinion the insurance claimed by said veteran is not payable under the law, and for such reason the claim \* \* \* is denied.” [44]

That said letter was received by plaintiff, John R. Haley, through one of his attorneys, Warren E.

Miller of Washington, D. C. on or about January 20th, 1937, and that the same was furnished to plaintiff, John R. Haley, after he had petitioned the Supreme Court of the District of Columbia for a Writ of Mandamus directed to Frank T. Hines, and upon which petition Frank T. Hines was ordered to appear and show cause why he should not either pay or refuse to pay said insurance; that, as heretofore stated, plaintiff, John R. Haley, and his predecessor, Ella May Stanton Wood, represent said estate and the creditors of said estate and through their respective attorneys demanded in writing of Frank T. Hines, Administrator of Veterans' Affairs, beginning with March 9th, 1930, the benefits of said insurance of George Salter, deceased, for his estate; that said claim was denied by Frank T. Hines, Administrator, in writing, in a communication dated January 19th, 1937 and received by plaintiff's attorneys about January 20th, 1937, and that said demand in writing and denial in writing constitute a disagreement between the plaintiffs, the estate of George Salter, deceased, and the United States of America, and the United States Veterans' Administration, successor to the United States Veterans' Bureau and the Administrator thereof, within the meaning of the War Risk Insurance Act of Congress and the amendments thereto.

### VIII.

That under the provisions of the War Risk Insurance Act and the amendments thereto, the estate of George Salter, deceased, is entitled to the pay-

ment of Four Thousand Four and 59/100 Dollars (\$4,004.59) as determined by the probate Court, as heretofore alleged, as costs of administration, legal claims allowed and the interest thereon, which is the sum of money the deceased's estate legally owes and which would not escheat under the laws of the State of Montana to the State of the residence of said deceased, and to which said estate is entitled out of the benefits of said War Risk Insurance policy [45] because of the death of said insured, and there is now due the estate of George Salter, deceased, from the defendant, the United States of America, the sum of Four Thousand Four and 59/100 Dollars (\$4,004.59).

Wherefore, plaintiff prays judgment against the defendant for the sum of Four Thousand Four and 59/100 Dollars (\$4004.59) in favor of the estate of George Salter, deceased, to be paid to John R. Haley, as administrator, d.b.n. and that the judgment herein provide for the payment to the plaintiff's attorney a fee of Ten percent (10%) of said judgment, and that plaintiff be awarded such other and further relief as to this Honorable Court seems meet and proper in the premises.

JOHN W. MAHAN,

Attorney for Plaintiff, Helena, Montana.

(Duly Verified.)

[Endorsed]: Filed July 22, 1940. [46]

[Title of District Court and Cause.]

## ANSWER

Comes now the defendant, United States of America, and for its answer to the amended complaint filed herein admits, denies and alleges, as follows:

### I.

For lack of information and belief as to the allegations contained in paragraph I of the complaint, they are denied.

### II.

The allegations of paragraph II of the complaint are denied except that it is admitted that George Salter died intestate on the 4th day of October 1918, and further admits and alleges that the said George Salter left no heirs or next of kin who were entitled to distribution of his estate under the laws of the State of Montana.

### III.

For lack of information or belief as to the allegations contained in paragraph III of the complaint, they are denied.

### IV.

Paragraph IV of the complaint is denied, except that it is admitted that George Salter was inducted into the army on April [53] 25, 1918, and served therein until the 4th day of October 1918 on which day he died intestate.



## V.

It is admitted that George Salter applied for and was granted a \$10,000 contract of war risk term insurance on May 6, 1918.

## VI.

The allegations of paragraph VI of the complaint are denied, except that it is admitted that George Salter died on October 4, 1918, at which time this insurance was in full force and effect; that in his application for insurance George Salter named himself as beneficiary.

## VII.

The allegations contained in paragraph VII are denied.

## VIII.

The allegations of paragraph VIII of the complaint are denied.

All allegations of the complaint not specifically admitted, modified or denied are here and now denied.

## Second Defense

The defendant moves the court that this action be dismissed upon the ground and for the reason that the amended complaint herein fails to state sufficient facts to constitute a claim against the defendant upon which relief can be granted.

Defendant demands a jury trial of all the issues so triable in this cause.

JOHN B. TANSIL,

United States Attorney.

FRANCIS J. MCGAN,

Attorney, Department of Justice.

[Endorsed]: Filed Aug. 29, 1940. [54]

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[Title of District Court and Cause.]

### TESTIMONY

The above-entitled case came on for hearing on Friday, November 14, 1941, at Great Falls, Montana, before the Hon. Chas. N. Pray, Judge, sitting without a jury, John W. Mahan, Esq., appearing as counsel on behalf of the plaintiff, and Francis J. McGan, Esq., appearing as counsel on behalf of the defendant, and the following testimony pertinent to the case and proceedings were had:

Mr. McGan: If the Court please, may the record show in this case that both the plaintiff and the defendant waive a trial by jury, reserving each to themselves the right of appeal. Is that right, John?

Mr. Mahan: That is right.

The Court: You may proceed, Mr. Mahan.

Thereupon Mr. Mahan made his opening statement to the Court, followed by a statement by Mr. McGan, which counsel agreed would not be neces-



sary to incorporate in the record, which concluded with this understanding:

Mr. McGan: So, so far as I am advised at this time, there [57] are no heirs of this soldier; he died in service while his insurance policy was in force; so this suit now resolves itself down to a creditors' suit, claims of creditors who put in their bills in 1934, June 2, 1934. One of these creditors is since deceased and the other is living, in Montana some place I understand, and the complaint asks judgment for the amount of these claims only and not for the whole amount of the insurance policy.

Mr. Mahan: And the costs of administration.

Mr. McGan: Well, I mean claims and cost of administration; and that is what this suit is about; it is just over the creditors claims.

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## PLAINTIFF'S CASE

JOHN W. MAHAN,

sworn as a witness on behalf of the plaintiff, testified as follows:

### Direct Testimony

Witness: Ella May Stanton Wood made an application as a creditor under the State Laws of Montana to be appointed administratrix of the Estate of George Salter, Deceased, some time in 1930, and the District Court of Silver Bow County, Montana, on the 11th day of August, 1930, appointed her as the administratrix. Later, Mrs. Wood re-

(Testimony of John W. Mahan.)

signed and John R. Haley was appointed Administrator d.b.n. of the Estate of George Salter, Deceased, by the same Court on June 2, 1934. John R. Haley is still the Administrator d.b.n. of this estate. The Letters have never been revoked and are still in full force and effect. I have—Mr. McGan procured it for me yesterday, marked here for identification “Plaintiff’s Exhibit No. 1”—the copy of the Letters of Administration; [58] I would like to have them admitted in evidence.

The Court: Very well; you agree on that?

Mr. McGan: Yes, your Honor.

### PLAINTIFF’S EXHIBIT No. 1

In the District Court of the Second Judicial District  
of the State of Montana, in and for the County  
of Silver Bow.

No. 9105

In the Matter of the Estate of  
GEORGE SALTER, Deceased.

Letters of Administration

The State of Montana,  
County of Silver Bow—ss.

John R. Haley is hereby appointed Administrator of the Estate of George Salter, deceased.

Witness, F. P. Kelly, Clerk of the District Court of the Second Judicial District of the State of Montana, with the seal thereof affixed, the 2nd day of June, 1934.

(Testimony of John W. Mahan.)

By Order of the Court,

F. P. KELLY,

Clerk.

By D. F. HOLLAND,

Deputy Clerk.

The State of Montana,  
County of Silver Bow—ss.

I, John R. Haley, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Montana; and that I will faithfully perform, according to law, the duties of Administrator of the Estate of George Salter, deceased.

JOHN R. HALEY,

Subscribed and sworn to before me the 2nd day of June, 1934. [59]

JOHN W. MAHAN,

Notary Public for the State of Montana, Residing  
at Helena, Montana.

My commission expires May 12th, 1936.

Office of the Clerk of the District Court of the  
Second Judicial District of the State of Mon-  
tana, in and for the County of Silver Bow.—ss.

I, Elmer Shea, Clerk of said Court, do hereby certify the foregoing to be a full, true and correct copy of the Letters of Administration issued to John R. Haley, in the matter of the estate of George Salter, deceased, now on file and of record in my

(Testimony of John W. Mahan.)

office, and I further certify that the same have not been revoked or vacated, but are still in full force and effect.

Witness my hand and the seal of said Court this 13th day of November, A. D., 1941.

ELMER SHEA,

Clerk.

By J. D. FREEBOURN,

Deputy Clerk.

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Mr. Mahan: Now I believe Mr. *Mahan* will admit for the defendant that George Salter, the decedent, was inducted into the United States army by the draft in Silver Bow County April 25, 1918, that he served honorably in the army from the 25th day of April, 1918, to October 4, 1918, on which date, that is, the later date, he was killed in action.

Mr. McGan: That is admitted.

Mr. Mahan: I will admit to simplify the case that, so far as the administratrix, or the administrator d.b.n., or the creditors or myself, so far as we know in our contact with this matter for ten years, there are no known relatives.

It is admitted that on May 6, 1918, the decedent George [60] Salter applied for and was granted \$10,000 contract of war term insurance by the United States Government, and that the premiums were paid on the insurance, and the same was in full force and effect on October 4, 1918, when George Salter was killed.

(Testimony of John W. Mahan.)

Mr. McGan: That is admitted in the answer.

Mr. Mahan: Now, upon information and belief and after a lot of investigating, George Salter was a resident of Silver Bow County, Montana, on the date of his induction into the army April 25, 1918. It is admitted in the record that George Salter registered in the draft in Silver Bow County, Montana, and was drafted and inducted into the service from there.

Mr. McGan: That is true.

Mr. Mahan: Showing myself, as a witness, Plaintiff's Exhibit No. 2—marked for identification Plaintiff's Exhibit No. 2: This is a letter which I received, as attorney for the administratrix, through the mail,—or maybe it was the administrator d.b.n.—through the mail on or about November 23, 1935, on a letter head of the Butte Mutual Labor Bureau, from Butte, Montana, and the letter was signed George W. Lentz, Mgr., Butte Mutual Labor Bureau, and I would like to offer that in evidence, if the Court please, as proof of residence.

Mr. McGan: No objection.

The Court: It will be received.

(Testimony of John W. Mahan.)

PLAINTIFF'S EXHIBIT No. 2

Geo. W. Lentz, Manager

F. L. Dervin, Ass't Manager

W. S. Daily, Ass't Manager

Butte Mutual Labor Bureau

Butte, Montana, Nov. 21, 1935.

John W. Mahan, Atty.,

617 Power Bldg.,

Helena, Montana.

Dear Sir:

Your letter of the 20th inst. regarding George Salter received. Beg to advise that the records at A.C.M. Co. employment [61] office shows one Geo. Salter was employed in 1917 and 1918 at the mines as miner. Left service April 1918. On his application he gave Canada as his birthplace.

Very truly

(Signed) GEORGE W. LENTZ Mgr.

Butte Mutual Labor Bureau

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Mr. McGan: I will admit there is a disagreement as to the claim herein sued upon; however, the Court understands, I am sure, that I do not admit jurisdiction; I admit they claim this money and it has been denied them.

Mr. Mahan: Mr. McGan, you admit that there is a disagreement so far as the suit is concerned; we made a demand and the administrators denied it,



(Testimony of John W. Mahan.)

and that the action was brought within the time, and as far as that point is concerned you are not claiming the Court does not have jurisdiction from that standpoint?

Mr. McGan: Oh, yes, I am claiming that these people aren't proper parties to this suit at all, that they are not proper parties to make a claim or to get a denial, that the statute is not intended for their benefit; but I am admitting that they made a claim to the Government for benefits under this insurance policy, and that they have a denial of that claim, and that this action, brought on that denial, is brought within the time; so that the Court is not confronted with any question of limitations.

Mr. Mahan: That is all I wanted to prove by these letters.

(Papers marked for identification Plaintiff's Exhibits Nos. 3, 4, and 5, and testimony given in relation thereto; objections were made to their receipt in evidence. Mr. McGan produces from his files and hands to Mr. Mahan a paper, which is marked Plaintiff's Exhibit No. 6.)

Mr. Mahan: I withdraw the offer. Mr. McGan has been kind [62] enough to give me the proof. I withdraw the offer of Exhibits 3, 4 and 5.

Now I show myself Plaintiff's Exhibit 6, marked for identification, and this is a paper given to me by Mr. Francis J. McGan, attorney of the Department of Justice representing the defendant in this case, and it is a copy of notice of death from the Ad-

(Testimony of John W. Mahan.)

Adjutant General's Office, dated December 28, 1918, and it is of George Salter, the decedent in this particular case, and I would like to offer it in evidence.

Mr. McGan: No objection.

Plaintiff's Exhibit No. 6, which is read to the Court, is as follows:

PLAINTIFF'S EXHIBIT No. 6

Treasury Department  
Bureau of War Risk Insurance  
Form 507

818

Copy of Notice of Death From the  
Adjutant General's Office

A. G. O. Dec. 28, 1918

Received: Jan. 3, 1919

Name: Salter, George

Serial No. 2,294,047

Rank: Pvt.

Organization: Co. L. 561st Inf.,

Date of death: Oct. 4, 1918

Cause of death: Killed in action, in line of duty  
and not the result of the soldier's  
own misconduct.

Emergency address: Mrs. Ella Johnson — Friend,  
Care of Broadway Cafe, Butte,  
Mont.

CC 311-3-2

For original see: C87775

per

H. C. BRUMBAUGH

The Adjutant General.



(Testimony of John W. Mahan.)

Mr. Mahan: Now, in the administration of the estate I had occasion to, and did, for a period of three or four years [63] beginning with 1930, make a search for property which might belong to George Salter, deceased; in fact, I was with the Administratrix in all of her investigations concerning property, and the only property, if it is property, in the estate of George Salter, deceased, is this claim: Showing myself Plaintiff's Exhibit marked for identification No. 7: this is a creditor's claim; it is alleged in the Complaint as Exhibit A, and I would like to offer in evidence this Exhibit, which is an exact copy of the original, and I take it that Mr. McGan is not going to object to it on the ground that it is not an original, for the reason he was going to bring the originals over yesterday and through a mistake of his secretary we didn't get the file.

Mr. McGan: I wish to object to the introduction of this claim, Exhibit No. 7, in evidence, on the ground and for the reason that it could have no bearing on the issue in this case; it is immaterial and incompetent; that the United States District Court for the District of Montana, in the case wherein this same claim was in issue, has held that the action or decree of a State court in probate can have no bearing on this suit and that it does not bind this Court. On the further ground the Government Statutes provide, your Honor, that the insurance herein sued upon is not subject to the claims of creditors, and I have here, your Honor, and I wish to read that

(Testimony of John W. Mahan.)

statute: "Payments of benefits due or to become due shall not be assignable, and such payments made to or on account of a beneficiary under any of the laws relating to veterans shall be exempt from taxation, exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever either before or after receipt by the beneficiary. Such provisions shall not attach to the claims of the United States arising under such laws, nor shall exemption herein contained as to taxation extend to any property purchased in part or [64] whole out of such payments." I object to its introduction on the further ground, your Honor, that this money due under this insurance policy will escheat to the United States; if it were paid into this estate it will escheat to the State, under the laws of the State of Montana this insurance would escheat to the State because there are no known heirs to take this money. One statute provides it is not subject to the claim of creditors, the other states it would escheat. Judge Bourquin ruled it was not bound by the decree of probate. So I object to the introduction of this claim in evidence on all those grounds.

Mr. Mahan: If the Court please, there are only two claims; I have another one.

The Court: Offer the other one. I will receive the exhibits subject to the objection.

Mr. Mahan: Plaintiff's Exhibit 8 is the same thing, and that is offered.

The Court: And Mr. McGan's objection will apply to it.

(Testimony of John W. Mahan.)

PLAINTIFF'S EXHIBIT No. 7

In the District Court of the Second Judicial District  
of the State of Montana, County of Silver Bow

No. 9105

In the Matter of the Estate of  
GEORGE SALTER, Deceased.

CREDITOR'S CLAIM

The undersigned, creditor of the estate of George Salter, deceased, presents her claim against the estate of said deceased, with the necessary vouchers, for approval, as follows, to-wit:

Estate of George Salter, deceased,  
To Hilma Nicholson, as Administratrix of the  
Estate of Mary Johnson, deceased.

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19 . .	\$
To ten months' board and lodging, laundry, etc., between June 1st, 1917, and May 1st, 1918, at the rate of \$75.00 per month . . . . .	750.00
Interest upon said amount is claimed from May 1st, 1918, the same amount- ing at the [65] date hereof, to the sum of . . . . .	745.83
Total . . . . .	\$1495.83

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(Testimony of John W. Mahan.)

State of Montana

County of Lewis and Clark—ss.

Hilma Nicholson, Administratrix of the Estate of Mary Johnson, Deceased, whose foregoing claim is herewith presented to the administrator of the estate of said deceased, being duly sworn, says that the amount thereof to-wit, the sum of Fourteen Hundred and Ninety-five Dollars and 83/100 (\$1495.83) is justly due to said claimant; that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of said claimant.

HILMA NICHOLSON

Subscribed and sworn to before me this 13th day of October, 1930.

[Seal]

C. E. PEW

Notary Public for the State of Montana. Residing at Helena, Montana. My commission expires September 30th 1932.

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(Endorsed)

District Court

County of Silver Bow

In the Matter of the Estate of

GEORGE SALTER, Deceased.

CLAIM OF

Hilma Nicholson, as administratrix of the estate of Mary Johnson, deceased.

For \$1495.83

(Testimony of John W. Mahan.)

The within claim presented to Administratrix of the estate of said deceased is allowed and approved for \$1495.83 this 23rd day of February, 1932.

ELLA MAY STANTON WOOD.  
Administratrix.

Allowed and approved for \$748.00 this 4th day of June, 1932.

JEREMIAH J. LYNCH,  
Judge. [66]

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PLAINTIFF'S EXHIBIT No. 8

In the District Court of the Second Judicial District of the State of Montana, County of Silver Bow.

No. 9105

In the Matter of the Estate of  
GEORGE SALTER, Deceased

CREDITOR'S CLAIM

The undersigned, creditor of George Salter, deceased, presents her claim against the Estate of said deceased, with the necessary vouchers, for approval, as follows, to-wit:

Estate of George Salter, deceased,  
To Ella May Wood, Dr.

(Testimony of John W. Mahan.)

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19 . .	\$
Money loaned George Salter between February 1, 1917, and April 25, 1918..	300
Interest on \$300 at 8% per annum from May 1, 1918, to March 1, 1932..	332
For nursing and care of George Salter for 180 days at \$5.00 per day between February 1, 1917, to October, 1917....	900
Interest on \$900 at 8% per annum from May 1, 1918 to March 1, 1932....	996
<hr/>	
Total .....	\$2528.—

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State of Montana

County of Lewis and Clark—ss.

Ella May Wood whose foregoing claim is herewith presented to the Court for jurisdiction of probate of estate of George Salter, deceased, being duly sworn, says that the amount thereof to-wit, the sum of Twenty-five Hundred Twenty-Eight Dollars (\$2528.00) is justly due to said claimant; that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of said claimant.

ELLA MAY WOOD

Subscribed and sworn to before me this 1st day of March, 1932. [67]

[Seal]

JOHN W. MAHAN

Notary Public for the State of Montana Residing  
at Helena, Montana. My Commission expires  
May 12th, 1933.

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(Testimony of John W. Mahan.)

(Endorsements)

District Court

County of Silver Bow

In the Matter of the Estate of

GEORGE SALTER, Deceased.

CLAIM OF

Ella May Wood

For \$2528.00

The within claim presented to .....  
of said deceased is allowed and approved for \$. ....  
this ..... day of ....., 193..

Claim of the administratrix herein.

Allowed and approved for \$1000.00 this 4th day  
of June, 1932.

JEREMIAH J. LYNCH

Judge.

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Mr. Mahan: Testifying as a witness, I have in my hand Plaintiff's Exhibit marked for identification No. 9, and this is a certified copy by the Clerk of the District Court of Silver Bow County, Montana, in the matter of the Estate of George Salter, deceased, of an order of that Court, order allowing report, settling account, and allowing administrators' and attorney's fees. In connection with this, I prepared the petition setting forth the figures in the accounting, and the only thing in the accounting



(Testimony of John W. Mahan.)

were the costs which actually had been expended and most of which I paid. This was set for hearing, and the Court fixed the attorney's fees, fixed the administrator's fees, and we put a recapitulation in of all of these claims, that is, these two claims Exhibits 7 and 8, [68] which makes up the whole case here; and I would like to offer this certified copy of this order in evidence for the same purpose that the claims were admitted.

Mr. McGan: I would like to have my other objection considered also an objection to this, and I have one other point to make: This order recites that a copy of a notice of hearing on this order was sent to John B. Tansil, United States Attorney for the District of Montana. That is true; I got it; I have it with me. That order said that we were to appear over there on the 2nd day of March. I went over there on the 2nd day of March to appear at this hearing, not because I was going to make any objection, but I wanted to go to see what was going to happen. I wasn't going to submit to jurisdiction of the State Court on a claim where we were not made parties. I went over there, and the claim didn't come on for hearing; nobody showed up, and I went back that noon when the Court recessed, and I heard no more of it; and the order here states on the 16th day of March this was entered. So I want the Court to know we didn't have any notice of hearing on this petition on the day it was heard.

Mr. Mahan: I am not admitting anything of the sort.

(Testimony of John W. Mahan.)

Mr. McGan: Then I will have one more objection to this: that it is not properly identified; it is just a blunt certified copy of the record and could have no bearing here.

Mr. Mahan: In other words, you are objecting because it is a copy?

Mr. McGan: I am objecting because it is a copy.

Mr. Mahan: I know what you are doing that for. If you will hear the balance of my testimony; I am under oath.

Mr. McGan: The purpose is so we could get the man and bring the whole record over and I could cross examine him.

Mr. Mahan: I don't think it is very material whether you were there or not, but I do know the United States Attorney was notified; I prepared the notice and went in to the Clerk and had it sent out. The date of the hearing was continued at my instance, and whether or not they notified counsel of the date to which it had been continued I have no knowledge, and [69] as far as I am concerned I am willing to take his word for it, but I do know the United States Attorney was notified of the hearing.

Mr. McGan: Do I understand you will admit that the United States Attorney had notice of this hearing of March 2 and you will admit I went over there to that hearing, and I didn't receive any other notice of any other hearing, neither did Mr. Tansil?

Mr. Mahan: You can testify to that fact. I will state I have no knowledge; but you agreed to let that

(Testimony of John W. Mahan.)

certified copy go in, and that was a gentleman's agreement between you and me yesterday.

Mr. McGan: Oh, well, John, I told you about this thing yesterday.

Mr. Mahan: You told me you would agree to let this in evidence.

Mr. McGan: Yes, sir, on a certain condition.

Mr. Mahan: And I asked you to bring the probate file over.

Mr. McGan: I have it right here.

Mr. Mahan: Let's put that original in.

Mr. McGan: No, this belongs to the Clerk in Butte.

Mr. Mahan: I don't know if you were at that second hearing; I have nothing to refute your testimony—. I will admit, as far as I am concerned, Francis J. McGan did not know anything about the date to which this hearing on which the petition to determine attorney's fees and administrator's fees was determined.

Mr. McGan: You wouldn't go one step further and say——

Mr. Mahan: I wish to offer Plaintiff's Exhibit No. 9, which is a certified copy of the order of the District Court in this matter.

Mr. McGan: We have the same objection to it as we have to Exhibits 7 and 8.

The Court: Let it be received subject to that objection. [70]

Mr. Mahan: Going ahead with my testimony for the record, As I stated, at the hearing on the claims

(Testimony of John W. Mahan.)

—now, the claim of Nicholson—administratrix of the Estate of Mary Johnson—who is now deceased, at the hearing held by Judge Lynch on that, the claim was reduced from \$1495.83 down to \$748.00; and at the hearing on Mrs. Ella May Stanton Wood, who was the original administratrix here, on her claim, and she made her claim for \$2528, and at the hearing by Judge Lynch on that it was reduced to \$1000.00; and the point I am making in that regard is that Judge Lynch went into the matter very thoroughly and exhaustively. I want to testify also with reference to the executor's fee which Judge Downey fixed at the hearing which Mr. McGan failed to attend, his fee was fixed at \$500.00 and the attorney's fee at \$750.00, and I have been the attorney all the way through, and I was the only witness who testified; and in taking those depositions in Ireland I had correspondence for a period of ten years and over, and I had all these letters here in which the solicitors of the Veterans' Bureau had been telling me what the law was and legal effect of this, and I had with me a petition—before we could get any place in court here I had to go to Washington, D. C., to even get a letter. The Department of Justice was very fair, but the Veterans' Administration has been an uphill climb. And these were fixed on the basis of work done, and they were fixed by Judge Downey without any instructions or suggestions from me. Now on this Order, the items of the cost of administration, fee for filing Petition for Letters, \$5.00; publication, notice to creditors,

(Testimony of John W. Mahan.)

\$5.80; and I will testify on that Notice to Creditors was given as required by Montana State Statute, published, and that within the time given in the notice these claims were filed properly with the administratrix and with the Court, and no other claims were filed. Then you will notice in this order here, Premium on surety bond of administratrix, \$120.01; you know when we filed our petition for Letters of Administration we gave a \$10,000 surety bond when we filed it, put up some \$67.00, because Mr. Evans said if [71] we would do that he would pay it, and we did it that way, and altogether we paid \$120.01; then otherwise they are just for costs; and receipts and vouchers were filed for each and everything in here with the exception of attorney's fees and executor's fee, and I know that of my own knowledge and was the only witness who testified there. Now, the sum total of *the and* costs of administration in this suit are \$4004.59 we want paid to this estate out of this \$10,000 policy.

I believe that is all; that is all my testimony.

Mr. McGan: Can I cross examine you?

Mr. Mahan: Why, sure.

(Before transcribing the cross examination, plaintiff's Exhibit No. 9 is here inserted.)

(Testimony of John W. Mahan.)

PLAINTIFF'S EXHIBIT No. 9

In the District Court of the Second Judicial District  
of the State of Montana, in and for the County  
of Silver Bow

No. 9105

In the Matter of the Estate of

GEORGE SALTER, Deceased.

ORDER ALLOWING REPORT, SETTLING AC-  
COUNT, AND ALLOWING ADMINISTRA-  
TORS' AND ATTORNEY'S FEES.

This matter coming on regularly to be heard upon the verified report, account and petition of John R. Haley, administrator d.b.n. of the estate of George Salter, deceased; petitioner being represented by his counsel, John W. Mahan, Esq. attorney at law, of Helena, Montana; and it appearing to the above Court that due and legal notice of the time and place of the hearing has been given by the Clerk of this Court by the posting thereof in three of the most public places in Silver Bow County, Montana, at least ten (10) days before the day of said hearing, and by the mailing of a copy of said notice of hearing to John B. Tansil, United States Attorney for the District of Montana, Federal Building, Butte, Montana, [72] at least ten (10) days before the date of said hearing; the Court hereby finds that due and legal notice of this hearing has been given as required by law; and the matter having been heard



(Testimony of John W. Mahan.)

and witnesses having been sworn and having testified in support thereof and the matter being submitted to the Court, and the Court being fully advised in the premises, and it appearing to the Court therefrom that said report is true and said account is correct, and that the same should be settled and allowed, and that said administrator d.b.n. and the original administratrix in said estate retained John W. Mahan, Esq., for the purpose of handling all of the legal matters connected with the administration of said estate, and that said administratrix and said administrator d.b.n. and their attorney are each entitled to a reasonable fee for their said services in said estate:

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed: That said report be, and the same is hereby approved, and that the said account be and the same is hereby settled and allowed.

It Is Further Ordered, Adjudged and Decreed: That said administratrix and said administrator d.b.n. be and they are hereby allowed a fee for their services as such in the amount of \$500.00, and that John W. Mahan, Esq., is hereby allowed as an attorney's fee in the administration of said estate the sum of \$750.00.

It Is Further Ordered, Adjudged and Decreed: That said administrator d.b.n. be and he is hereby authorized and directed to pay out of any assets in said estate the following:



(Testimony of John W. Mahan.)

Fee for filing Petition for Letters . . . . .	\$ 5.00
Publication, Notice to Creditors . . . . .	5.80
Premiums on surety bond of administratrix . . . . .	120.01
Clerk of District Court, certification of papers . . . . .	4.50
Joseph V. Flaherty, services, typing papers . . . . .	8.50
Lois Redlich, services, typing papers . .	5.00
Fee, filing petition Supreme Court, District of Columbia, for writ of mandate . . . . .	10.00
To John W. Mahan, Esq. for his services as an attorney's fee . . . . .	750.00
To the administratrix and administrator d.b.n. for the usual and ordinary services and for extraordinary services in the administration of said estate, the sum of . . . . .	500.00
To Ella May Stanton Wood, the principal amount of her claim heretofore allowed by this [73] Court, the sum of	1000.00
Together with interest thereon at the rate of 6% per annum dating from June 4th, 1932 until the same is paid.	
To Hilma Nicholson, administratrix of the estate of Mary Johnson, deceased, on her claim heretofore allowed by this Court the principal sum of . . . . .	748.00
Together with interest thereon at the rate of 6% per annum dating from June 4th, 1932 until the same is paid.	

(Testimony of John W. Mahan.)

It Is Further Ordered, Adjudged and Decreed: That each and every act of said administrator d.b.n. as reported be, and the same is hereby approved and ratified.

Dated this 16th day of March, 1940.

T. E. DOWNEY

District Judge

(Certificate of Attestation certifying that the foregoing is a full, true and correct copy in probate Matter No. 9105, in the matter of *George Slater*, Deceased. Dated March 16, 1940, and signed by Elmer Shea, Clerk, by D. F. Holland, Deputy Clerk, and seal of court affixed.)

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### Cross Examination

By Mr. McGan:

Q. I notice item here, Mr. Mahan, for the Administratrix and administrator de bonis non, ordinary services and extraordinary services, \$500.00; what were those extraordinary services?

A. Of the administratrix and the administrator de bonis non, well, under the Montana Statutes—

Q. No, I am asking you.

A. I am telling you.

Q. I know about that. Tell me what the services were.

A. The legal representative of George Salter, deceased, appointed by the District Court in Silver Bow County, Montana, in 1930, and with the admin-

(Testimony of John W. Mahan.)

istratrix that service continuing, she was a resident of Helena but went to Butte for the reason that Salter was a resident of Butte when he died, and she went over there to give the Court jurisdiction, and each appearance that she made she went over, I hauled her over several times, beginning ten years ago, roads weren't very good, we used to go over, her husband and myself, we usually [74] went over the night before, stay over, go into court at none thirty the next morning, and she served approximately that way for four years, and everything that was done she did and she took the responsibility, with the exception of what I did as her legal representative.

Q. She had the responsibility for what money in the estate?

A. She gave a surety bond for ten thousand dollars and never had a dime in the estate.

Q. Did she have any responsibility for any property at all?

A. We never found any property, other than this money, but we had a tremendous—well, I might say we were figuring there for a couple of years we were going to have this money at any time, and our battle, if you want to call it a battle, our controversy, was with the Veterans' Bureau first and Veterans' Administration, for four years, until Haley was appointed, and Haley has continued for the past six years; and the five hundred dollars is for both of them; and you will notice there is no expense account there either, traveling around for the estate or

(Testimony of John W. Mahan.)

stationery or stamps or telegrams or anything else, there isn't any expense account charged against the estate at all for the administratrix or the administrator, which could be a very considerable sum if it were added up.

Q. I will show you what has been marked as Plaintiff's Exhibit No. 2.           A. Yes, sir.

Q. That is the letter you received from the Mutual Labor Bureau.           A. Yes, sir.

Q. Mr. Mahan, that states he worked from 1917 as a miner until 1918, and that he left in April. Do you know when he started in 1917?

A. I have no knowledge, even by information, as to any exact date in 1917 that he went to work for the A. C. M. Co., but I do know he was over in Butte about a year or over before he was inducted in the army April 25, 1918; that is my information. [75]

Q. Is it your information that he worked for the A. C. M. Company while he was there?

A. No; my information is that he worked for the Great Northern Railway and fired out of Butte for a while, presumably before he went to work for the A. C. M. Company.

Q. I mean after he did go to work for them, he worked for them to the exclusion of other people until he quit and went to war?

A. That is my understanding, that is my information, that when he went to work for the A. C. M. Company he was on call over there and they were very busy over there.

(Testimony of John W. Mahan.)

Mr. McGan: That is all, your Honor.

Mr. Mahan: My information is that George Salter was living in Great Falls for some months or so and moved over to Butte and was in Butte about a year before he was drafted on April 25, 1918.

With the consent of counsel—I don't want to introduce this big record in evidence—Will you admit what I am now reading is from the original record?

Mr. McGan: I don't think you can read his handwriting. Let me give you a copy.

(That seems to have ended that phase, whatever it was.)

Mr. Mahan: I would like at this time to just briefly, say ten minutes, give our position to the Court, and then let counsel give his position, and would like to have a few days to submit a memorandum on the points involved in the law.

Mr. McGan: If the Court please, I think the law is so plain in this case, that the law is just so plain that there can only be—I don't mean to say there can only be one interpretation, but I think the Court can make up his mind very quickly.

The Court: Would you rather submit it in black and white?

Mr. Mahan: I would rather submit a memorandum. &c. &c. I think we can do it in a little memorandum and present it to the Court very clearly.

[76]

The Court: Probably that would be just as well. I wouldn't want to decide the case on my impres-

(Testimony of John W. Mahan.)

sion until I had given it some consideration, and I would like to have a memorandum, citation of authorities, in think, in the usual way. Memorandum, serve on Mr. McGan a copy, and let him answer, and if you have some replies to make, do that.

Mr. Mahan: Thank you.

The Court: That is the ordinary way, and if you have statutes to cite I would like to have them before me and read them. And then the question would be the time.

Mr. Mahan: Today is the 14th. I would like to have——

The Court: Take all the time you need.

Mr. McGan: Well, thirty days a side?

The Court: Yes.

Mr. McGan: After we receive the transcript? I think we should have a transcript of the testimony.

The Court: Yes, thirty days after you receive the transcript, Mr. Mahan will have, and Mr. McGan will have thirty days, and have fifteen days for reply.

Mr. McGan: I would like to have the reporter copy into the transcript all the papers, and send me a letter tomorrow telling me how much it will be.

I move for judgment——

Mr. Mahan: Each side is moving for judgment. Shall we submit proposed Findings of Fact and Conclusions of Law?

The Court: Yes, you may do that.



(Testimony of John W. Mahan.)

Mr. McGan: Comes now the defendant and asks the Court for judgment, on the ground and for the reason, first, that the Court is without jurisdiction to hear and determine this case, in that there are no proper parties before the Court. Second, that the complaint in this case fails to state a claim upon which relief can be granted. Third, that this insurance money, if it is due, is not payable in this case, because it would escheat, under Section 451, Title 38, U.S.C.A. Next, on the further ground and for the reason that this [77] insurance money is not subject to the claims of creditors, as provided by section 454, title 38, U.S.C.A.

Mr. Mahan: On motion for judgment, I assume the Court will take it under advisement?

The Court: Yes, they are both taken under advisement.

Clerk Garlow: Can Mr. Crowther have an order to withdraw the exhibits.

The Court: Yes.

[Endorsed]: Filed Nov. 19, 1941. [78]

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And Thereafter, upon motion of counsel for defendant, trial of said cause was reopened, as more particularly appears from the Minutes of this Court, which are in words and figures as follows, to-wit:



No. 199, John R. Haley, as Admr., etc., vs. United States.

At this time Mr. John W. Mahan appeared for the plaintiff, and Mr. Francis J. McGan appeared for the defendant, United States.

Thereupon counsel for defendant moved the court to reopen the trial of the case for the sole purpose of offering in evidence the Judgment Roll in cause #1429, entitled: John R. Haley, as Administrator of the Estate of George Salter, Deceased; John Salter, and Peter Salter, Plaintiffs vs. United States of America, being a cause filed in the Helena Division of this court.

Thereupon Mr. Mahan stated that the plaintiff agrees to have the case reopened for that specific purpose only.

Thereupon Mr. McGan offered in evidence the aforesaid judgment roll #1429, which was marked for identification as Defendant's Exhibit 10.

Thereupon Mr. Mahan, counsel for Plaintiff, made and filed certain objections to the admission of said defendant's Exhibit Number 10, whereupon the court received said Exhibit Number 10 in evidence, subject to said objections.

Thereupon at the request of Mr. McGan, court ordered that said Defendant's Exhibit #10 may be transmitted to the Clerk at Butte, and the Clerk at Helena, for use of respective counsel in the case.

Thereupon Mr. Mahan was granted thirty days to file a brief after receipt of copy of transcript, and Mr. McGan granted 30 days to file his brief

after receipt of Plaintiff's Brief, and Mr. Mahan granted 15 days thereafter, for reply brief if so advised. [79]

The objections of counsel for the plaintiff to the admission in evidence of defendant's Exhibit No. 10, which were signed and filed, are in words and figures as follows, to-wit:

I object on the part of the plaintiff to the receipt of this Judgment Roll in evidence, upon the grounds following:

(1) That the defendant did not plead it in the answer and that neither the same nor any part thereof serves to prove or disprove any of the issues framed by the pleadings in this case;

(2) That this Judgment Roll is in a case in which the administrator of the estate of George Salter, deceased, John Salter, and Peter Salter are plaintiffs, while in the instant case only the administrator is plaintiff; that is, the same parties are not involved in each action;

(3) That in the case, Cause No. 1429, the action was brought to recover the full amount of the war risk term insurance of George Salter, the death benefits thereof, while this case is to recover only money owed by George Salter;

(4) That the other case, Cause No. 1429, went to judgment, but not on its merits, and under the federal statutes one of these cases terminated for any other reason than on its merits may be re-filed within a period of one year after termination by judgment in the first case; and

(5) That the same is immaterial, irrelevant and redundant, and will serve only to encumber the record.

(Signed) JOHN W. MAHAN,  
Attorney for Plaintiff. [80]

### DEFENDANT'S EXHIBIT No. 10

Said exhibit being a Judgment Roll in the case No. 1429, entitled John R. Haley, as Administrator of the Estate of George Salter, Deceased, John Salter, and Peter Salter, Plaintiffs, versus United States of America, Defendant, which was received in evidence subject to plaintiff's objection, is in words and figures as follows, to-wit: [81]

In the District Court of the United States for the  
District of Montana, Helena Division

ELLA MAY STANTON, As Administratrix of  
the Estate of George Salter, Deceased,  
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,  
Defendant.

### COMPLAINT AT LAW

Comes now the plaintiff above named and for cause of action against the defendant, complains and alleges:

#### I.

That the plaintiff, Ella May Stanton was appointed as administratrix of the Estate of George

## Defendant's Exhibit No. 10—(Continued)

Salter, Deceased, by the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, on the 11th day of August, 1930, by order of said court regularly made and entered therein, and has been since and is now the regularly appointed, qualified and acting administratrix of the Estate of George Salter, Deceased.

## II.

That on or about the 27th day of April, 1918, at the City of Butte, County of Silver Bow, State of Montana, George Salter, Deceased, enlisted and was inducted into the armed forces of the defendant, the United States of America, with the grade of Private, and served under the War Department in the Army of the United States with said grade of Private in the Infantry Division from the said 27th day of April, 1918 until the 4th day of October, 1918, and was during all of said times employed in the active military service of the United States under the direct supervision [82] of its War Department in the War with Germany and her Allies.

## III.

That on or about May, 1918, the said George Salter, Deceased, made application to the proper officers of the United States for insurance under the provisions of Article IV of the War Risk Insurance Act of Congress and the regulations of the War Risk Insurance Bureau of the defendant established by said Act, in the sum of \$10,000 but that said George Salter, Deceased, never received a cer-

Defendant's Exhibit No. 10—(Continued)  
tificate of his compliance with the War Risk Insurance Act but that after making said application for insurance and during the entire term of plaintiff's service under the War Department as aforesaid, there was deducted from his monthly pay for such service for the defendant, United States of America, through its proper officers, the monthly premiums upon said War Risk Insurance provided for by said Act and the rules and regulations promulgated thereunder by the War Risk Insurance Bureau and the Director thereof.

#### IV.

That the said George Salter, Deceased, died on the 4th day of October, 1918, while said insurance was in full force and effect and was killed in action while fighting with the armed forces of the defendant with the American Expeditionary Forces in France; that no beneficiary or beneficiaries within the class permitted by the said War Risk Insurance Act or other acts relating thereto, was named by the said George Salter, Deceased, and that under the law the said insurance matured and was and is payable to the estate of said deceased.

#### V.

That prior to the commencement of this action the said Ella May Stanton made demand upon the United States of [83] America and upon the United States Veterans Bureau and the Director thereof, for the benefits of said insurance and for the monthly payments due under the provisions of said War

## Defendant's Exhibit No. 10—(Continued)

Risk Insurance Act and the insurance so applied for by the said George Salter, Deceased, for the death benefits of the said insurance; that the plaintiff demanded that the defendant pay said benefits voluntarily and the said defendant and the said Bureau and the Director thereof, have denied the claim of plaintiff to the benefits of said War Risk Insurance Act and of the insurance so applied for under said Act by the said George Salter, Deceased, and has refused, and still continues to refuse to grant plaintiff such benefits and pay them into the Estate of George Salter, Deceased, and has refused to make such payments and there now exists a disagreement between the plaintiff and the said defendant, United States of America, and the said United States Veterans Bureau and the Director thereof, within the meaning of the War Risk Insurance Act of Congress and the amendments thereof.

## VI.

That under the provisions of the War Risk Insurance Act and the amendments thereof, plaintiff is entitled to the payment of \$57.50 for every month since October 4, 1918 to the date of the filing of this complaint, such payments amounting in all to the sum of \$8,222.50.

Wherefore, plaintiff prays judgment against the defendant for the sum of \$8,222.50; that the judgment herein provide for the payment of plaintiff's attorney's fee of 10% of such judgment and for the payment to said attorney of 10% of all future



Defendant's Exhibit No. 10—(Continued)  
payments made under said insurance and that plaintiff be awarded such other and further relief as to this Honorable Court may seem meet and proper in the premises.

(Signed)                      JOHN W. MAHAN,  
Attorney for Plaintiff.

(Verified) [84]

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[Title of District Court and Cause.]

### AMENDED COMPLAINT AT LAW

Come now the plaintiffs above named and for cause of action against the defendant complain and allege:

#### I.

That the plaintiff, Ella May Stanton Wood, is the duly and regularly appointed, qualified and acting administratrix of the estate of George Salter, deceased, appointed by order of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, regularly made and entered herein on the 11th day of August, 1930, and ever since has been, and now is the duly and regularly appointed, qualified and acting administratrix of the said estate.

#### II.

That on or about the 3rd day of October, A.D. 1932, the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, by order and decree regularly made and entered in said Court on said day, determined



## Defendant's Exhibit No. 10—(Continued)

the said John Salter and the said Peter Salter to be the brothers of George Salter, deceased, and to be the only heirs at law of said deceased, and entitled to inherit the whole of the estate of said George Salter, deceased, under the intestate laws of the [97] State of Montana; that attached hereto and by this reference made a part hereof, is plaintiff's "Exhibit A", which is a certified copy of the proceedings had in said court and which includes said decree of said court determining heirship, as aforesaid.

## III.

That on or about the 27th day of April, 1918, at the City of Butte, County of Silver Bow, State of Montana, George Salter, now deceased, enlisted and was inducted into the armed forces of the defendant, the United States of America, with the grade of private and served under the War Department in the army of the United States with the grade of private in the Infantry Division from the said 27th day of April, 1918, until the 4th day of October, 1918, and was, during all of said time, employed in the active military service of the United States under the direct supervision of its War Department in the war with Germany and her allies.

## IV.

That on or about May, 1918, the said George Salter, now deceased, made application to the proper

## Defendant's Exhibit No. 10—(Continued)

officers of the United States for insurance under the provisions of Article IV of the War Risk Insurance Act of Congress and the regulations of the War Risk Insurance Bureau of the defendant established by said Act, in the sum of Ten Thousand Dollars (\$10,000.00), but that said George Salter, deceased, never received a certificate of his compliance with the War Risk Insurance Act, but that after making said application for insurance and during the entire term of George Salter's service under the War Department, as aforesaid, there was deducted from his monthly pay for such service for the defendant, United States of America, through its proper officers, the monthly premiums upon said War Risk Insurance provided for by said Act and the rules and regulations promulgated thereunder by the War Risk Insurance Bureau and the Director thereof. [98]

## V.

That the said George Salter, deceased, died on the 4th day of October, 1918, while said insurance was in full force and effect, and was killed in action while fighting with the armed forces of the defendant in the American Expeditionary Forces in France; that in his said application for insurance, said George Salter, deceased, named himself as beneficiary and that said insurance matured after the death of George Salter, deceased, on the 4th day of October, 1918, and on said day became payable to the estate of said George Salter, deceased.

## Defendant's Exhibit No. 10—(Continued)

## VI.

That prior to the commencement of this action the said Ella May Stanton Wood, made demand upon the United States of America and upon the United States Veterans Bureau and the Director thereof for the benefits of said insurance and for the payments due under the provisions of the War Risk Insurance Act as amended and the insurance so applied for by the said George Salter, deceased, for the death benefits of said insurance; that the said defendant, and the said Bureau, and the said Director thereof, denied the claim of plaintiff Ella May Stanton Wood, administratrix, to said benefits of said War Risk Insurance Act as amended, and of the insurance so applied for under said Act by the said George Salter, deceased, and have refused and still continue to refuse to grant any benefits to the estate of George Salter, deceased, and to pay to it any amount under said contract, and there now exists a disagreement between plaintiffs and the said defendant, the United States of America, and the said United States Veterans Administration, successor to the United States Veterans Bureau, and the Administrator thereof, within the meaning of the War Risk Insurance Act of Congress and the amendments thereof.

## VII.

That under the provisions of the War Risk Insurance Act [99] and the amendments thereto, the estate of George Salter, deceased, is entitled to the payment of the entire benefits of said War Risk

Defendant's Exhibit No. 10—(Continued)

Insurance policy because of the death of said insured, such benefits amounting in all to the face value of said policy of Ten Thousand Dollars (\$10,000.00) and the accrued interest thereon of Thirty-Eight Hundred Dollars (\$3800.00), and there is now due the estate of George Salter, deceased, from the defendant on said insurance, the sum of Thirteen Thousand Eight Hundred Dollars (\$13,800.00).

Wherefore plaintiffs pray judgment against the defendant for the sum of Thirteen Thousand Eight Hundred Dollars (\$13,800.00) in favor of the estate of George Salter, deceased, to be paid to Ella May Stanton Wood, as the administratrix thereof, and that the judgment herein provide for the payment to plaintiffs' attorneys a fee of 10% of such judgment, and that plaintiffs be awarded such other and further relief as to this honorable court may seem meet and proper in the premises.

SMITH, MAHAN & SMITH,

Attorneys for Plaintiffs.

(Duly Verified.) [100]

## Defendant's Exhibit No. 10—(Continued)

In the District Court of the Second Judicial District  
of the State of Montana, in and for the County  
of Silver Bow.

In the Matter of the Estate of  
GEORGE SALTER, Deceased.

DECREE DETERMINING HEIRSHIP,  
OWNERSHIP AND INTEREST

This day, the petition of Peter Salter and John Salter, for the determination of heirship, ownership and interest in and to the estate of George Salter, deceased, coming on regularly to be heard, the said petitioners being represented by their counsel, Carl J. Christian, Esq., the said Carl J. Christian having filed herein with said petition and at the same time said petition was filed, written evidence of his authority to so appear, which said written evidence is written in the English language and signed by said petitioners, Peter Salter and John Salter, entry of which said appearance of said Carl J. Christian was by order of the court made in the minutes of the court, and the register of the proceedings of said estate, and the administratrix of said estate being represented by counsel John W. Mahan, Esq., and their being no appearing in person or by counsel of any other person or persons, and due proof having been made to the satisfaction of the court that service of the notice of this hearing upon all persons claiming any interest in said estate, and upon Ella May Stanton as administratrix of the estate of said deceased, and upon Olive Crabtree, has been

## Defendant's Exhibit No. 10—(Continued)

duly made and given as required by law and by the order of the above entitled court herein, the court thereupon made and entered upon the minutes of the court an order establishing proof of service of such notice in the manner and for the time required by law and by the order of this court;

And the time limited for appearing herein, as aforesaid, having expired, thereupon the court made and entered herein its order adjudging the default of said Olive Crabtree and of all persons named and unnamed, other than said petitioners for not appearing herein as aforesaid, and for failure to appear and show cause why the court should not proceed to determine heirship, ownership and interest of all persons in and to the estate of said deceased, as required by the order of the above entitled court heretofore given, made and entered [115] herein, and thereupon the court proceeded to the hearing of said petition;

Whereupon, the court finds from the evidence submitted on the part of said petitioners that said deceased, George Salter, left surviving him no wife or children, father, mother or sister, but that said deceased left surviving him relatives, to-wit, Peter Salter, brother of said deceased, aged 54 years, residing at Corbally, Abbeylax, Ireland, and John Salter, brother of said deceased, aged 58 years, residing at Monmore, Ireland, who are the two and only heirs at law and next of kin of said George Salter, deceased, and that said Peter Salter and John Salter are the persons to whom all of the estate



## Defendant's Exhibit No. 10—(Continued)

and property of said deceased, remaining in the hands of said administratrix of his estate, after payment of the debts and expenses of administration herein, shall be distributed, and the matter having been submitted to the court for decision and determination, and the law and the evidence having been fully considered, and it appearing to the court that the matters and things stated in said petition are true;

Now, Therefore, by virtue of the law and the premises,

It Is Ordered, Adjudged and Decreed, that the said Peter Salter and John Salter are the two and only heirs at law of said George Salter, deceased, and that said Peter Salter and John Salter are the only persons entitled to share in the estate of said deceased; that said Peter Salter and John Salter are entitled to all of the residue of the property of the estate of said deceased after payment of the debts and expenses of administration, and that the said Peter Salter and John Salter are entitled to a decree of final distribution made in the course of administration of said estate, in the above entitled court, distributing to them all of the residue of said estate in the manner provided by law, and in accordance with the laws of the State of Montana, and that upon distribution of said estate, the residue of said estate, after payment of debts and expenses of administration, including the costs of this proceeding, shall be distributed to Peter Salter and John Salter.

## Defendant's Exhibit No. 10—(Continued)

That said estate of said deceased consists of personal [116] property only, to-wit, of a policy of War Risk Insurance in the sum of \$10,000.00, with the Government of the United States of America; it is further Ordered, Adjudged and Decreed, that until such estate shall be finally closed and distributed, it shall be subject to the control of this court, the possession of said administratrix, and to the payment of all charges for and on account of, and for the purpose of administration of said estate:

It is further, Ordered, Adjudged and Decreed, that the administratrix of said estate pay to Carl J. Christian, attorney for petitioners, out of the funds of said estate, the sum of Fifteen Dollars (\$15.00) to reimburse him for the amounts paid by him to the Clerk of the above entitled court for filing said petition and for entry of judgment and decree to determine heirship herein and the amount paid the Montana Labor News for publication of said notice of hearing said petition to determine heirship, as ordered by this court.

Done in open Court this 3rd day of October, A. D. 1932.

JEREMIAH J. LYNCH,  
Judge.

[Endorsed]: Filed Oct. 3, 1932. [117]

Defendant's Exhibit No. 10—(Continued)  
In the District Court of the United States  
District of Montana, Helena Division

ELLA MAY STANTON WOOD, Admx. of Estate  
of George Salter, deceased; JOHN SALTER  
and PETER SALTER,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

DEMURRER

Comes now the defendant in the above entitled action and demurs to plaintiff's amended complaint on file herein, upon the ground, and for the reason that said complaint does not state facts sufficient to constitute a cause of action against said defendant.

WELLINGTON D. RANKIN,  
United States Attorney,  
District of Montana.

D. L. EGNEW,  
Assistant U. S. Attorney,  
Attorneys for the Defendant.

Due service of the foregoing Demurrer and receipt of a true copy is hereby acknowledged this 3rd day of March, 1933.

SMITH, MAHAN AND SMITH

[Endorsed]: Filed March 4, 1933. [119]

Defendant's Exhibit No. 10—(Continued)  
[Title of District Court and Cause.]

### ORDER SUSTAINING DEMURRER

The demurrer is sustained.

No matter what the effect of the State Probate decree between those notified and required to appear, it is horn-book law that the United States is never required to submit to any court save as *some its* statutes provide; and since *none its* statutes require it to appear in said state court, the consequence is that so far as it is concerned the decree of heirship is so much waste paper. There must be due allegation of heirship and of course due proof at trial.

BOURQUIN, J.

[Endorsed]: Filed March 22, 1933. [120]

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In the District Court of the United States, in and  
for the District of Montana, Helena Division

#1429

JOHN R. HALEY, as Administrator of the Es-  
tate of George Salter, Deceased; JOHN  
SALTER, and PETER SALTER,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

FOURTH AMENDED COMPLAINT AT LAW

Leave of Court being first had to substitute the

## Defendant's Exhibit No. 10—(Continued)

name of John R. Haley as administrator of the estate of George Salter, deceased, in lieu of Ella May Stanton Wood, resigned, and to file a fourth amended complaint, come now the plaintiffs above named and file this their fourth amended complaint and for cause of action against the Defendant, complain and allege:

## I.

That Ella May Stanton Wood was duly and regularly appointed as administratrix of the estate of George Salter, deceased, by order of the District Court of the 2nd Judicial District of the State of Montana in and for the County of Silver Bow, regularly made and entered therein in the matter of the Estate of George Salter, deceased, on the 11th day of August, 1930, and served as said administratrix of said estate from the 11th day of August, 1930, to June 2nd, 1934; that the Plaintiff, John R. Haley is now the duly and regularly appointed, qualified and acting administrator of the estate of George Salter, deceased, appointed by order of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, in the matter of the estate of George Salter, deceased, regularly made and entered therein on the 2nd day of June, 1934; that letters of administration were duly and regularly issued to the Plaintiff, John R. Haley by said Court on the 2nd day of June, 1934, and the same have never been revoked and are now in full force [127] and effect, and as such administrator he succeeded Ella May Stanton Wood, who resigned.

## Defendant's Exhibit No. 10—(Continued)

## II.

That the Plaintiffs John Salter and Peter Salter are brothers of George Salter, deceased; that the father and mother of George Salter, deceased, are now dead; that George Salter, deceased, was never married and consequently left no issue; that the said George Salter, deceased, has no sister living; that the said John Salter and Peter Salter are heirs at law of George Salter, deceased, and are the only heirs at law of the said George Salter, deceased; that under the intestate laws of the State of Montana, John Salter and Peter Salter are entitled as brothers, and as the only heirs at law of said deceased to inherit the whole of the estate of the said George Salter, deceased; that George Salter, deceased, died intestate a resident of Silver Bow County, Montana on the 4th day of October, 1918, and his estate is entitled to be distributed under the intestate laws of the State of Montana, and that the said John Salter and Peter Salter are entitled to have the residue of said estate distributed to them as aforesaid.

## III.

That a proceeding was had in the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow in the matter of the estate of George Salter, deceased, probate file No. 9105 to determine heirship in said estate; that in said proceeding which complied with the provisions of the laws of the State of Montana in all respects for proceedings to determine



## Defendant's Exhibit No. 10—(Continued)

heirship, and that on or about the 3rd day of October, 1932 said Court by order and by decree, duly, regularly entered and filed in said Court on said day, the Court having jurisdiction to make such decree, determined and decreed the said John Salter, and the said Peter Salter to be brothers of George Salter, deceased, and to be the only heirs at law of said deceased, and as such entitled to inherit the whole of the estate of said George Salter, deceased, under the intestate laws of the State of Montana; that in said proceeding said Court had jurisdiction of the subject matter and of the parties; [128] that attached hereto, and by this reference made a part hereof is Plaintiff's "Exhibit A", which is a certified copy of the said proceedings had in said Court and which includes said decree of said Court determining heirship as aforesaid; that the said decree of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, a certified copy of which is attached hereto and made a part hereof as aforesaid adjudicates and determines the matter of the heirship in the estate of George Salter, deceased, and is binding upon the above entitled Court.

## IV.

That on or about the 27th day of April, 1918, at the City of Butte, County of Silver Bow, State of Montana, George Salter, now deceased, enlisted and was inducted into the armed forces of the defendant, the United States of America, with the grade of private and served under the War Department in the army of the United States with the

Defendant's Exhibit No. 10—(Continued)  
grade of private in the Infantry Division from the said 27th day of April, 1918, until the 4th day of October, 1918, and was, during all of said time, employed in the active military service of the United States, under the direct supervision of its War Department in the war with Germany and her Allies; that at the time of his enlistment, April 27th, 1918, the said George Salter, now deceased, was a legal resident of Silver Bow County, Montana.

V.

That on or about May, 1918, the said George Salter, now deceased, made application to the proper officers of the United States for insurance under the provisions of Article IV of the War Risk Insurance Act of Congress and the regulations of the War Risk Insurance Bureau of the defendant, established by said Act, in the sum of Ten Thousand Dollars (\$10,000.00), but that said George Salter, deceased, never received a certificate of his compliance with the War Risk Insurance Act, but that after making said application for insurance, and during the entire term of George Salter's service under the War Department, as aforesaid, there was deducted from his monthly pay for such service for the defendant, United States of America, through its proper officers, the monthly premiums [129] upon said War Risk Insurance provided for by said Act and the rules and regulations promulgated thereunder by the War Risk Insurance Bureau and the Director thereof.

## Defendant's Exhibit No. 10—(Continued)

## VI.

That the said George Salter, deceased, died on the 4th day of October, 1918, while said insurance was in full force and effect, and was killed in action while fighting with the armed forces of the defendant in the American Expeditionary Forces in France; that in his said application for insurance, said George Salter, deceased, named himself as beneficiary and that said insurance matured after the death of George Salter, deceased, on the 4th day of October, 1918, and on said day became payable to the estate of said George Salter, deceased.

## VII.

That prior to the commencement of this action, Ella May Stanton Wood as administratrix of the estate of George Salter, deceased, made written demand upon the United States of America and upon United States Veterans' Bureau and the director thereof for the benefits of said insurance and for the payments due under the provisions of the War Risk Insurance Act as amended, and the insurance so applied for by the said George Salter, deceased, for the death benefits of said insurance payable to the estate of George Salter, deceased, that said defendant and the said Bureau and the said director thereof in a letter written to Ella May Stanton Wood, administratrix of the estate of George Salter, deceased, received by her in the due course of mail denied the claim of said administratrix to said benefits of said War Risk Insurance Act as amended, and for the insurance

Defendant's Exhibit No. 10—(Continued)

so applied for under said act by the said George Salter during his lifetime, and have refused, and still continue to refuse, to grant any benefits to the estate of George Salter, deceased, and to pay to it any amount under said contract, and there now exists a disagreement between Plaintiffs and the said Defendant the United States of America and the said United States Veterans' Administration, successor to the United States Bureau and the administrator thereof, within the meaning of the War Risk Insurance Act of Congress and the [130] amendments thereof.

#### VIII.

That under the provisions of the War Risk Insurance Act and the amendments thereto, the estate of George Salter, deceased, is entitled to the payment of the entire benefits of said War Risk Insurance Policy because of the death of said insured, such benefits amounting in all to the face value of said policy of Ten Thousand Dollars (\$10,000.00), and there is now due the estate of George Salter, deceased, from the defendant on said insurance, the sum of Ten Thousand Dollars (\$10,000.00).

Wherefore plaintiffs pray judgment against the defendant for the sum of Ten Thousand Dollars (\$10,000.00) in favor of the estate of George Salter, deceased, to be paid to John R. Haley, as administrator thereof, and that the judgment herein provide for the payment to plaintiffs' attorneys a fee of 10% of such judgment, and that plaintiffs be

Defendant's Exhibit No. 10—(Continued)  
awarded such other and further relief as to this  
honorable court may seem meet and proper in the  
premises.

JOHN W. MAHAN,  
Helena, Montana,  
Attorney for Plaintiff.

(Duly verified.) [131]

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[Title of District Court and Cause.]

DEMURRER TO FOURTH  
AMENDED COMPLAINT

Comes now the defendant above named and demurs to the Fourth Amended Complaint of the plaintiffs on file herein, and for grounds of demurrer says:

1. That the said Fourth Amended Complaint does not state facts sufficient to constitute a cause of action in favor of the plaintiffs, or either of them and against the defendant above-named.

2. The said complaint is ambiguous, uncertain and unintelligible, in that it cannot be ascertained therefrom when or upon what date the administratrix of the estate of George Salter, deceased, made written demand upon the defendant and the United States Veterans Bureau and the Director thereof for the benefits of said insurance, or

When or upon what date the Director of the Bureau or the said Bureau mailed the letter of

Defendant's Exhibit No. 10—(Continued)  
denial referred to in paragraph 7 of the said  
amended complaint to the said administratrix.

JAMES H. BALDWIN

United States Attorney

R. LEWIS BROWN

Assistant U. S. Attorney

FRANCIS J. McGAN

Attorney, Department of  
Justice

Attorneys for Defendant.

[149]

The within demurrer was submitted by counsel  
for the parties named therein without argument;  
and the demurrer and the amended complaint hav-  
ing been considered by this Court, and the court  
being duly advised, and good cause appearing there-  
for, the said demurrer is hereby sustained.

CHARLES N. PRAY,

Judge.

[Endorsed]: Filed Aug. 11, 1934. [150]

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[Title of District Court and Cause.]

### OPINION

This is an action on a contract of War Risk In-  
surance issued to George Salter, a soldier of the  
United States in the World War of 1918, and  
brought by the administrator of his estate to re-  
cover certain amounts therein named to pay credi-  
tors' claims, attorney's fees and costs of adminis-



Defendant's Exhibit No. 10—(Continued)

tration, which had been allowed by the state district court of Silver Bow County, Montana.

One of the claims in the sum of \$1495.83 filed in the state court was that of Hilma Nicholson, as administratrix of the estate of Mary Johnson, deceased, which was allowed for \$748.00. Another claim in the sum of \$2528.00 was filed by Ella May Stanton Wood and allowed by the said court for \$1000.00. Plaintiff alleges there was no money in the estate. The state court allowed expenditures of the administrator in the sum of \$1,408.81, his fees of \$500.00, and those of his attorney for \$750.00. Interest on said claims was also allowed in the sum of \$847.78, and the total sum found to be due from the estate of said George Salter, as allowed by the state court, amounted to \$4,004.59. This soldier was granted War Risk Insurance in the sum of \$10,000.00 in May, 1918, and premiums were paid by deductions from his monthly pay; the insured died October 4th, 1918, while his insurance was in full force and effect. One of the creditors, Ella May Stanton Wood, made a demand on the Veterans' Bureau for insurance benefits which was denied January 19th, 1937. Plaintiff claims that, as administrator, he is entitled to the payment of the total sum above named out of the benefits of the War Risk Insurance policy on the death of the insured.

The Answer to the Amended Complaint admits the induction of the insured into the army April 25, 1918; his service until the 4th of October, 1918, when he was killed in action; the granting on May

Defendant's Exhibit No. 10—(Continued)

6, 1918 [154] of a contract of yearly renewable term insurance, and that his insurance was in full force and effect at the time of his death; that in his application for insurance he named himself as beneficiary, and that he left no heirs or next of kin, who would be entitled to distribution of his estate under the laws of the State of Montana. All other allegations of the complaint were denied. As a second defense the Answer presented a motion to dismiss the case on the ground that the amended complaint failed to state facts sufficient to constitute a claim against the defendant upon which relief could be granted. The case was tried to the court without a jury and submitted on briefs.

It appears from exhibits attached to the Amended Complaint that the claim of Hilma Nicholson as administratrix of the estate of Mary Johnson, deceased, was a charge for ten months board and lodging, laundry, etc., from June 1st, 1917 to May 1st, 1918, at the rate of \$75.00 per month; there was also an interest charge of \$745.83. As alleged this claim was allowed for \$748.00 June 4th, 1932 by the state court. The claim of Ella May Stanton Wood for \$2528.00 consisted of a loan of \$300.00 and an interest charge of \$332.00; also an additional charge of \$900.00 for nursing and care of George Salter for 180 days at \$5.00 per day between February 1, 1917 and October, 1917, with an interest charge thereon amounting to \$996.00. This claim was allowed by the state court for \$1000.00 June 4th, 1932. On March 16th, 1940, the Judge of the District Court, Second Judicial District of the State

Defendant's Exhibit No. 10—(Continued)  
of Montana in and for Silver Bow County, wherein the estate was being administered, entered an order, allowing report, settling account, allowing administrator's and attorney's fees, claims of the two creditors, costs and charges of administration, in the sums aforesaid and as shown in the exhibit. The petition for the above order, allowance of claims and settlement of account, recites that "notice was given at least ten days before the day of said hearing, by mailing a copy of said notice of hearing to John B. Tansil, United States Attorney for the District of Montana, Butte, Montana", but it appears from the evidence that this notice to the United States Attorney required him to appear on March 2nd, 1940, and that no hearing was held on [155] that date and that he received no further notice.

At one time, back in 1930, Ella May Stanton, as administratrix of the soldier's estate, commenced an action against the United States, in the above named federal court, Helena Division, to recover monthly benefits of the said insurance policy for the estate from date of death. In 1933 an amended complaint was filed in which John Salter and Peter Salter were introduced and alleged to be brothers of deceased, the state court for Silver Bow County having theretofore entered a decree of heirship to that effect, and having held that they were the only heirs at law of said deceased and entitled to inherit all of his estate: copy of this decree was attached as an exhibit to the amended complaint, to which Judge Bourquin sustained a demurrer,

Defendant's Exhibit No. 10—(Continued)

holding that: "no matter what the effect of the state probate decree between those notified and required to appear, it is horn-book law that the United States is never required to submit to any court save as *some its* statutes provide; and since none of its statutes require it to appear in said state court, the consequence is that so far as it is concerned the decree of heirship is so much waste paper. There must be due allegation of heirship and of course due proof at trial."

In 1933 and 1934, other amended complaints were filed, the last one substituting John R. Haley as administrator in place of Ella May Stanton Wood who had resigned, and alleging that the Probate Court had determined by decree that John Salter and Peter Salter were the brothers and only heirs of said deceased, and attached thereto was a certified copy of the Probate Court proceedings. A demurrer to the foregoing amended complaint was sustained on the ground that it failed to state facts sufficient to constitute a cause of action, and further that the same was uncertain in jurisdictional allegations of demand and denial; on February 4th, 1936, a motion to dismiss for failure to amend was granted.

The defendant objected to the admission in evidence of matters relating to the claims of creditors, allowance of report, settling of account, orders, allowance of fees of administrator and attorney by the state court of Silver Bow County. Plaintiff objected to the introduction of the Judgment Roll

Defendant's Exhibit No. 10—(Continued)  
in case No. 1429 which was the [156] case in which Judge Bourquin made the ruling above quoted in sustaining the demurrer.

The complaint in the first action and the original complaint in this action alleged that John and Peter Salter were brothers of the deceased, and if Judge Bourquin had accepted the proof of heirship made and allowed in the state court to that effect, the insurance money would have been paid out to the administrator for the benefit of these alleged brothers, who, as was afterwards established by the F. B. I. were of no relation to the deceased. If Judge Bourquin's ruling was correct in respect to proof of heirship in the state court, it would seem to follow according to his application of the rule that his decision would have been exactly the same had the creditors' claims and administration charges been before him on the same kind of proof made in the state court.

Counsel contend that under the rule of law established in our own circuit in *Hardy v. North Butte Mining Co.*, 22 Fed. (2) 62, and in *Carnegie Nat. Bank v. City of Wolf Point*, 110 Fed. (2) 569, this court is bound by Judge Bourquin's decision heretofore quoted; that the same parties, or their successors, are present in this case; the same insurance policy; the same kind of proof, made in the state court, is offered here as an exhibit attached to the complaint, and that substantially the same record and questions are now before the same court with the same relief being sought. Whether this court is bound by Judge



## Defendant's Exhibit No. 10—(Continued)

Bourquin's ruling or not, the claims of creditors and allowances made in the state court have not been established by competent proof in this court, and for that reason it would seem that the rule invoked by Judge Bourquin, which this court believes to be the correct rule, should apply in this case, and that the motion to reject such evidence should be sustained. Such a ruling at this point would end the case, but there is another important question which has been extensively dealt with by counsel in briefs and oral argument, which the court believes should also be considered, and that is whether the claims of creditors, expenses and charges of administration incurred in the state court, could be recovered from the contract of insurance of said soldier with the government. In considering this further issue it may be assumed that [157] the required allegations have been made and established by competent evidence in this court. It is admitted that the insured died intestate, leaving no heirs surviving him, and that the plaintiff seeks only an award of so much of the insurance money as would be sufficient to pay the alleged debts of the insured and the costs of charges of administration in the amount aforesaid. Under the state of facts here and the law applicable it would seem that the insurance would not be payable, and that it would escheat to the United States under sections 451 and 514, Title 38, U. S. C. A., but in that connection another issue should be considered and that is whether the insurance money



## Defendant's Exhibit No. 10—(Continued)

would be exempt from the claims of creditors under Sections 454 and 454a, Title 38, U. S. C. A.

The Supreme Court held in *Pagel, et al v. Pagel, et al*, 291 U. S. 473, under Section 454, that "It is clear that the statute does not extend the exemption beyond the insured and his beneficiary." In that case an award had been made to the estate of the insured and there were heirs who would inherit the insurance money. The question there for determination was whether the creditors of insured could be paid out of the insurance money or whether the exemption provided in Section 454 would survive the insured for the benefit of his heirs. Under the facts in that case the court decided that the insurance money held by the Administrator was subject to the claims of the creditors. But it further appears that section 454, which was the basis of that decision, was repealed at the next session of Congress and a broader statute enacted in its place, known as section 454a, which reads as follows: "Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. \* \* \*" It will be noted that the new statute so changed the law under which the *Pagel* case was decided as to exempt payments made on account of a beneficiary under any of the laws

## Defendant's Exhibit No. 10—(Continued)

relating to veterans. The insurance in this case was taken out by the veteran and payable to himself as beneficiary, and therefore any [158] payments that might be made would have to be made on account of the beneficiary, and under the altered provisions of the statute such payments are declared to be exempt. Counsel for the government states that his research has not disclosed any case wherein this new statute has been the subject of judicial comment by any federal court, and this court thus far has found none. However, there are two cases from the state courts construing section 454a, and one of them seems to be an important and well reasoned decision, and is known as *In re McCormick's Estate*, 8 N. Y. S. 2d 179. In this case the court held that the insurance money in the hands of the administrator of a veteran's estate is not subject to the claims of creditors under the new or amended statute; that the manifest intention of Congress in changing the law was to extend the exemption not only to the soldier himself but to his estate as well; that any payment of insurance benefits to his estate would be made on account of the insured. Counsel for plaintiff cited *Brown v. United States*, 65 F. (2) 65, C. C. A. 9, as determinative of the instant case, but it clearly appears from a perusal of that authority that the two cases are entirely different in respect to the issues involved.

The reply of government counsel to that claim seems to dispose of the argument completely. The decision in the *Brown* case made no reference to

## Defendant's Exhibit No. 10—(Continued)

Section 454, was decided before the enactment of 454a, or the amendment thereto of October, 1940. It held that the probate of the nuncupative will of the deceased soldier was lawful, but no question was raised or decided there as to whether the proceeds of the insurance policy were exempt from the claims of creditors. The other case cited by counsel refers to a dictum to the effect that Section 454a creates an exemption of proceeds in favor of "Veterans, their children, widows and estates." (*Culp v. Webster*, 25 Cal. App. 2d. Supp. 759, 70 Pac. 2nd, 273, 275.)

After a careful consideration of this voluminous record, arguments of counsel, briefs and authorities, the court has been unable to find ground for agreement with plaintiff's contentions. The court has already practically held that the rule established by Judge Bourquin is the correct rule of law to apply in this case, [159] but if this court had held otherwise it would seem that a favorable result for plaintiff could not be attained in view of the provisions of Section 454a and in either event, the motion to dismiss would have to be granted.

Consequently, in the opinion of the court, the defenses interposed by counsel for the government should be sustained, as above indicated, and it is so ordered, with costs to the defendant.

CHARLES N. PRAY,  
Judge.

[Endorsed]: Filed Aug. 21, 1942. [160]

In the District Court of the United States for the  
District of Montana, Great Falls Division

No. 199

JOHN R. HALEY, as Administrator of the Estate  
of GEORGE SALTER, Deceased,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly for trial at Great Falls, Montana, on the 14th day of November, 1941, before this Court, Honorable Charles N. Pray, Judge, presiding without a jury, and after hearing all of the evidence and considering the arguments of counsel and briefs submitted, the Court makes the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACT

1. That John R. Haley is the duly qualified and acting administrator of the estate of George Salter, deceased.

2. That George Salter was inducted into the military service of the United States April 25, 1918.

3. That on May 6, 1918, George Salter, the insured herein, applied for and was granted a policy of War Risk Term Insurance in the principal sum of \$10,000.00; that said insured named himself as beneficiary of said insurance, and that said insur-

ance was in full force and effect at the time of the insured's death.

4. That the said insured was killed in action October 4, 1918, and at the time of his death was a resident of the State of Montana; that said insured died intestate and at the time of his death he had no known heirs or next of kin, who would be entitled to distribution of his estate under the laws of the State of Montana. [162]

5. That demand for insurance benefits was filed by the Administratrix of the estate of the insured herein March 9, 1930, and that the same was denied January 19, 1937.

From the foregoing facts the Court concludes as a matter of law, to-wit:

### CONCLUSIONS OF LAW

1. That the Court has jurisdiction of this action.

2. That according to provisions of Section 514, Title 38, U. S. C. A., said insurance is not payable to the estate of the insured.

3. That under the provisions of Section 454 a, Title 38, U. S. C. A., said insurance is not subject to the claims of creditors of the insured.

4. That the complaint herein should be dismissed on its merits.

Judgment may be entered accordingly.

Dated this 14th day of September, 1942.

CHARLES N. PRAY,

Judge.

[Endorsed]: Filed Sept. 14, 1942. [163]

In the District Court of the United States for the  
District of Montana, Great Falls Division.

No. 199

JOHN R. HALEY, as Administrator of the Estate  
of GEORGE SALTER, Deceased,  
Plaintiff,

vs.

UNITED STATES OF AMERICA,  
Defendant.

### JUDGMENT

This cause came on regularly for trial at Great Falls, Montana, before this Court, Honorable Charles N. Pray, Judge, presiding without a jury, on November 14, 1941. The plaintiff was represented in court by his attorney, John W. Mahan, Esquire, Helena, Montana, and the defendant was represented by its attorneys, John B. Tansil, Esquire, United States Attorney for the District of Montana, and Francis J. McGan, Esquire, Attorney, Department of Justice. Witnesses were sworn and testified on behalf of the plaintiff and documentary evidence was received;

Whereupon, after argument of counsel, cause was taken under advisement by the Court, and both the plaintiff and defendant filed their briefs, and the Court, after having considered the evidence, the arguments of counsel and the briefs of the parties, filed his Findings of Fact and Conclusions of Law.

Wherefore, by virtue of the law and the premises, it is hereby Ordered, Adjudged and Decreed that



this action should be and the same is hereby dismissed on its merits.

Dated this 14th day of September, 1942.

CHARLES N. PRAY,

Judge.

[Endorsed]: Filed and entered September 14, 1942. C. R. Garlow, Clerk. By C. G. Kegel, Deputy. [165]

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[Title of District Court and Cause.]

MOTION TO AMEND AND TO MAKE ADDITIONAL FINDINGS OF FACT AND TO AMEND THE JUDGMENT ACCORDINGLY.

Comes now Plaintiff in the above entitled action and respectfully moves the court to amend its findings of fact and to make additional findings of fact and to amend the judgment in said action accordingly, as follows to wit:

## FINDINGS OF FACT

### I.

That John R. Haley is the duly qualified and acting administrator d. b. n. of the estate of George Salter, deceased. Appointed by order of the District Court of the State of Montana, in and for the County of Silver Bow. That the estate of said George Salter, deceased, was first probated in said court on August 11, 1930—the original administratrix re-

signed and John R. Haley was appointed Administrator d. b. n. on June 2, 1934.

## II.

That George Salter was inducted into the military service of the United States April 25, 1918.

## III.

That on May 6, 1918, George Salter, the insured herein, applied for and was granted a policy of War Risk Term [167] Insurance in the principal sum of \$10,000.00; that said insured named himself as beneficiary of said insurance, and that said insurance was in full force and effect at the time of the insured's death.

## IV.

That the said insured was killed in action October 4, 1918, and at the time of his death was a resident of the State of Montana; that said insured died intestate and at the time of his death he had no known heirs or next of kin, who would be entitled to distribution of his estate under the laws of the State of Montana.

## V.

That demand for insurance benefits was filed by the Administration d. b. n. of the estate of the insured herein March 9, 1930, and that the same was denied January 19, 1937; and to make additional findings of fact as follows to wit:

## VI.

That the District Court of the Second Judicial District of the State of Montana, in and for Silver

Bow County, duly and regularly took jurisdiction of the probate of the estate of George Salter, Deceased, and said Court retained jurisdiction thereof and said Court still has jurisdiction thereof, said estate having not been closed and during the process of the administration of the estate of said deceased, in the District Court of Montana, Silver Bow County, the Administratrix published notice to creditors; that within the time set forth in said notice and as allowed by law, Hilma Nicholson, Administratrix of the estate of Mary Johnson, deceased, duly and regularly filed her claim as said Administratrix, against the estate of George Salter, deceased, in the sum of \$1495.83: That within the time allowed Ella Many Stanton Wood also filed [168] her claim against the said estate in the sum of \$2528.00: That after due hearing the District Court of Silver Bow County, Montana, setting in probate, allowed said claims; Hilma Nicholson as Administratrix in the sum of \$748.00 and the claim of Ella Man Stanton Wood in the sum of \$1000.00; That both of said claims were duly and regularly allowed and approved by said District Court on the 4th day of June, 1932.

## VII.

That in the due course of Administration of the estate of George Salter, deceased, in the District Court of Silver Bow County, Montana, the said District Court allowed costs of administration as follows:

Fees of Administrator .....	\$500.00
Fees of Attorney .....	\$750.00
Miscellaneous costs in the sum of...	\$158.81

making a total expense of Administration in said estate in the sum of \$1408.81: That the interest on said claims at six per cent per annum from the date they were allowed until the instant case was filed is \$847.78: That the total claims, interest thereon and costs of administrative duly and regularly allowed by the District Court of Silver Bow County, Montana having in probate the estate of George Salter, deceased, are \$4004.59.

#### VIII.

That the estate of George Salter, deceased, has no property or assets of any kind or character and there are no known assets and the Administrator has depended upon the War Risk Term Insurance of decedent to pay costs of administration and the debts of said estate. [169]

#### IX.

That \$4004.59 of the War Risk Term Insurance held by said Deceased at the time of his death would not escheat under the laws of the State of Montana, the State of the Deceased's residence at the time of his death.

JOHN W. MAHAN,

Attorney for Plaintiff, Helena, Montana.

[Endorsed]: Filed Sept. 24, 1942. [170]

[Title of District Court and Cause.]

MOTION TO SET ASIDE DECISION AND  
FOR JUDGMENT FOR PLAINTIFF, OR,  
IN THE ALTERNATIVE FOR A NEW  
TRIAL.

Comes now the plaintiff, above named, and respectfully moves this court in the above entitled cause to set aside the decision, the finding of fact and conclusion of law and the judgment entered thereon and for judgment in his behalf on the grounds following:

I.

1. That the insured, George Salter, deceased, petitioned for and was granted his War Risk Term Insurance for the specific purpose of protecting his creditors in the event of his death.

2. That it was proved in the trial of said cause without contradiction that \$4004.59 of said insurance would not escheat under the laws of the State of Montana, the residence of said decedent as provided in Section 514, Title 38, U. S. C. A.; That the District Court of the Second Judicial District of the State of Montana in and for the County of Silver Bow, in the matter of the estate of George Salter, deceased, had the original jurisdiction of the probate of the estate of said deceased, and the same cannot by this defendant be collaterally attacked 61 Fed. (2d) 61.

3. That Section 454, Title 38, U. S. C. A. has no bearing on this case for the reason that it was not enacted into the law until August 12, 1935 and that

Section 454a, Title 38, U. S. C. A. was not enacted into law until October 17, 1940; that the insured acquired his insurance in May 1918, he was killed in action in October 1918, and the claims of the creditors allowed by the probate Court of Silver Bow County, Montana on June 4, 1932, more than three years prior to the enactment of Section 454, Title 38, U. S. C. A. and more than eight years prior to the enactment of 454a, Title 38, U. S. C. A.; that the claims of said creditors accrued, were made, and allowed by a Court of competent jurisdiction [172] years before the enactment of said limitation and that said limitation could not possibly, over these circumstances have any effect in regard to these particular claims. It is not challenged that the costs of administration are not properly payable, but the claims of creditors are challenged.

4. That it affirmatively appears from the evidence from this case introduced by the plaintiff, that the insured took out his insurance to protect his creditors and made the same payable to himself or his estate; that the insured was killed in action while said insurance was in full force and effect and that his estate made application for said insurance and the same was denied and that \$4004.59 of said insurance money is required to pay the costs of administration and the claims of creditors legally allowed.

## II.

In the event plaintiff's motion to set aside the decision and judgment entered thereon, and for judgment for the plaintiff, is denied, then and in



that event, and in the alternative, the plaintiff prays that he be granted a new trial upon the grounds and for the following reasons.

1. Error in law occurring at the trial.

2. That the insured took out his insurance for the specific purpose of protecting his creditors and plaintiff did not believe that it was questioned at the trial by the defendant that he took out his insurance specifically to protect his creditors. Proof can be made at a new trial of that additional fact, if the same is by Court deemed necessary.

This motion is based and will be presented on the record and files herein, upon the pleadings, upon the exhibits introduced, upon the decision of the Court, findings of facts and conclusions of law and the judgment entered thereon.

Dated this 23rd day of September, 1942.

JOHN W. MAHAN,

Attorney for Plaintiff, Helena, Montana.

[Endorsed]: Filed Sept. 24, 1942. [173]

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[Title of District Court and Cause.]

### ORDER OVERRULING MOTIONS

The questions before the court at this time are on the "Motion to set aside decision and Judgment and for Judgment for Plaintiff, or, in the alternative, for a new trial", and "Motion to Amend and

to Make Additional Findings of Fact and to Amend the Judgment Accordingly.”

Both parties filed briefs; no reply brief was filed and time therefor has long since expired.

From the motions submitted and a careful examination of the briefs the court has been unable to find any serious issue raised that has not already been considered by the court following a trial of the issues and oral arguments and briefs of counsel. But the court has reconsidered the issues involved and the authorities relied upon by counsel and also by the Court in reaching a decision and has been unable to find a sufficient cause for changing the views expressed in the decision and findings heretofore rendered, or in the decree therein entered; consequently being duly advised and good cause appearing therefor, the said motions are hereby overruled and denied.

CHARLES N. PRAY,  
Judge.

[Endorsed]: Filed Oct. 29, 1943. [175]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Above named Defendant, and to Hon. John B. Tansil, United States Attorney, and Hon. Francis J. McGan, Attorney, Department of Justice, Attorneys for said Defendant:

You and each of you will please take notice that the above named plaintiff hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, from the final judgment given, made, rendered and entered in the above entitled cause by the above entitled District Court, on the 14th day of September, 1942, dismissing the above entitled action upon the merits, and from the order of said District Court, given, made, rendered and entered in the above entitled cause on the 29th day of October, 1943, denying and overruling the motion of the plaintiff to amend and make additional findings of fact and to amend the judgment accordingly, and denying and overruling the motion of plaintiff to set aside said decision and judgment of said District Court and for judgment for plaintiff, or, in the alternative, for a new trial; and plaintiff appeals from the whole of said judgment and order.

Dated January 20th, 1944.

JOHN W. MAHAN,

C. E. PEW,

Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 20, 1944. [177]

[Title of District Court and Cause.]

### BOND FOR COSTS ON APPEAL

Know All Men by These Presents: That John R. Haley, Administrator, as principal, and Cora Read Pew and William L. Hunter, as sureties, hereby acknowledge themselves jointly and severally firmly bound unto the above named defendant, the United States of America, in the sum of Two Hundred and Fifty Dollars (\$250.00), lawful money of the United States, for the payment of which, well and truly to be made, we and each of us, respectively, bind ourselves and our and each of our heirs, executors and administrators, jointly and severally as afore-said, firmly by these presents.

Sealed with our seals and dated this 19th day of January, 1944.

The condition of the above obligation is such that whereas, the plaintiff is appealing to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment of the above entitled District Court entered in the above entitled cause on September 14th, 1942, and from the order of said District Court entered on October 29th, 1944, denying and overruling certain motions made by the plaintiff after the entry of such judgment, now, therefore, if the plaintiff shall pay the costs of appeal if the appeal is dis- [179] missed or said judgment and order or either of them affirmed, or such costs as said appellate Court may award if said judgment or order are, or either of them is, modified, then this obligation to be void; otherwise to remain in full force and effect.

Dated January 19, 1944.

Estate of George Salter, Deceased;  
JOHN R. HALEY,  
Administrator.

[Seal] By JOHN W. MAHAN,  
Atty. for Administrator,  
Principal.

[Seal] CORA READ PEW,

[Seal] WILLIAM L. HUNTER,  
Sureties.

State of Montana,  
County of Lewis and Clark—ss.

Cora Read Pew and William L. Hunter, the sureties named in the foregoing bond, being first duly sworn, each for himself says: I am a resident and freeholder and householder within the County of Lewis and Clark, State of Montana, and am worth double the amount of the within bond, over and above all my just debts and liabilities, and not including property exempt from execution.

CORA READ PEW,  
WILLIAM L. HUNTER.

Subscribed and sworn to before me this 19th day of January, 1944.

[Notarial Seal] BLANCHE MARES,  
Notary Public for the State of Montana, residing  
at Helena, Montana.

My Commission expires Apr. 4, 1945.

[Endorsed]: Filed Jan. 20, 1944. [180]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL

Hon. Harry H. Walker,  
Clerk of the above entitled Court:

The plaintiff hereby designates, to be contained in the record on appeal in the above entitled cause, copies of the following papers:

The Complaint;

The Amended Complaint;

The Answer to the Amended Complaint;

The Decision of the Court;

The Findings of Fact and Conclusions of Law;

The Judgment;

The Transcript of Proceedings at Trial of Cause;

The Motion of plaintiff to amend and to make additional Findings of Fact and to Amend the Judgment Accordingly;

The Motion of plaintiff to set aside Decision and Judgment and for Judgment for Plaintiff, or, in the Alternative for a New Trial;

The Order of Court of October 29, 1943, denying and overruling said motions;

The Notice of Appeal;

The Bond on Appeal;

This Designation.

Dated January 20th, 1944.

JOHN W. MAHAN &

C. E. PEW,

Attorneys for Plaintiff and  
Appellant.

[Endorsed]: Filed Jan. 21, 1944. [182]



[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby certify and return to The Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 183 pages, numbered consecutively from 1 to 183, inclusive, is a full, true and correct transcript of all portions of the record and proceedings designated by the parties as the record on appeal in case Number 199, John R. Haley, as Administrator of the Estate of George Salter, deceased, vs. United States of America, as appears from the original records and files of said court in my custody as such Clerk.

I further certify that the costs of said transcript amount to the sum of Thirty-two and 95/100 Dollars (\$32.95) and have been paid by the appellant.

Witness my hand and the seal of said court at Great Falls, Montana, this 1st day of February, A. D. 1944.

[Seal]

H. H. WALKER,

Clerk U. S. District Court,  
District of Montana.

By C. G. KEGEL,

Deputy Clerk. [183]

[Endorsed]: No. 10727. United States Circuit Court of Appeals for the Ninth Circuit. John R. Haley, as Administrator of the Estate of George Salter, Deceased, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Montana.

Filed April 7, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

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In the United States Circuit Court of Appeals,  
For the Ninth Circuit.

JOHN R. HALEY, As Administrator of the Estate of George Salter, deceased,  
Plaintiff, and Appellant,

vs.

THE UNITED STATES OF AMERICA,  
Defendant and Appellee.

POINTS RELIED UPON BY APPELLANT  
AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED

To the Clerk of the Said Circuit Court of Appeals,  
San Francisco, California.

Sir:

The Appellant hereby states the points on which

he intends to rely in this appeal, and designates the parts of the record he thinks necessary for the consideration of said points, as follows:

Points To Be Relied Upon By Appellant:

1. That George Salter died in the military service of the United States, while in line of duty, on October 4, 1918;

2. That at the time of his death said George Salter held a policy of War Risk Term Insurance for the sum of \$10,000.00, issued to him by the United States, and payable to him or his estate, and that at the time of his death all premiums which were due thereon had been paid;

3. That the estate of George Salter has been in process of probate since 1930, and still is in process of probate, in the district court of Silver Bow County, Montana, sitting in probate, of which county said George Salter was a legal resident at the time of his death;

4. That plaintiff (appellant) at all times since prior to the commencement of this action has been and still is the administrator of said estate;

5. That claims of creditors of said George Salter, and expenses of the administration of said estate, have been regularly allowed by said probate court, and that the only asset possessed by said estate out of which said claims and expenses can be paid is said policy of insurance;

6. That said George Salter left him surviving no known heirs or next of kin, and no last will and testament;

7. That a disagreement arose between appellant and the Veterans Administrator of the United States as to the payment of said insurance on January 23, 1937;

8. That said District Court of the United States for the District of Montana had jurisdiction of this action; and that the said Circuit Court of Appeals for the Ninth Circuit likewise has jurisdiction of this appeal.

DESIGNATION OF PARTS OF RECORD APPELLANT *THINGS* NECESSARY FOR THE CONSIDERATION OF THE FOREGOING POINTS:

Appellant designates as necessary to the consideration of the above points parts of the record herein as follows:

Name of Document	Page numbers of Record.
1. Complaint-at-Law,	3 to 10
2. Amended Complaint-at-Law,	39 to 46
3. Answer,	53 and 54
4. Transcript of Proceedings at Trial,	57 to 81
5. Complaint-at-Law,	82 to 84
6. Amended Complaint-at-Law,	97 to 100
7. Decree Determining Heirship,	115 to 117
8. Demurrer,	119
9. Order,	120
10. Fourth Amended Complaint,	127 to 131
11. Demurrer to Fourth Amended Complaint,	149
12. Order,	150

Name of Document.	Page numbers of Record.
13. Judgment of Dismissal,	151
14. Opinion of Judge Pray,	154 to 160
15. Findings of Fact and Conclusions of Law,	162 and 163
16. Judgment,	165
17. Motion to Amend and Make Addi- tional Findings of Fact and to Amend Judgment Accordingly	167 to 170
18. Motion to Set Aside Decision and Judgment and for Judgment for Plaintiff, or, in the Alternative for a New Trial,	172 and 173
19. Order Overruling Motions,	175
20. Notice of Appeal,	177
21. Bond For Costs on Appeal,	179 and 180
22. Designation of Contents of Record on Appeal	182
23. Certificate of Clerk to Record,	183

In order to make sure of our compliance with Rule 19 of this Court, and for the possible convenience of the Clerk in printing the Record, we state below the converse of the foregoing statement:

In printing the Record herein,	Pages of Record.
1. Omit verification, page 11, and Ex- hibits to Complaint,	12 to 37
2. Omit verification,	47
3. Omit Exhibits to Amended Complaint,	48 to 51
4. Omit Affidavits of Service,	55
5. Omit verification,	85

Name of Document.	Page numbers of Record.
6. Omit Summons and certification of Service,	86 and 87
7. Omit Demurrer,	88
8. Omit Answer,	89 to 92
9. Omit Amended Complaint,	93 to 96
10. Omit verification,	101
11. Omit Exhibits,	102 to 114
12. Omit Certificate of Attestation,	117 to 118
13. Omit Amended Complaint,	121 to 125
14. Omit Order,	126
15. Omit Verification,	131
16. Omit Exhibits,	132 to 148
17. Omit Certificate of Clerk to Exhibit 10 of Defendant (Judgment Roll in previous case),	152

In addition to the parts of the record above designated for printing, the title of the court and cause, the names of counsel for the respective parties, and such other formal parts as may be required by the rules or practice of the Court and of your office, will of course be printed.

Dated at Helena, Montana, March 31st, 1944.

JOHN W. MAHAN

C. R. PEW

Attorneys for Plaintiff and  
Appellant.



Service of the foregoing statement of Points to Be Relied Upon by Appellant and Designation of Parts of Record to Be Printed and receipt of a copy thereof acknowledged this....day of March, 1944.

.....

United States Attorney for  
the District of Montana,

.....

Special Attorney, Department  
of Justice,  
Attorneys for Defendant and  
Appellee.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed April 7, 1944. Paul P.  
O'Brien, Clerk.

